

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,

Plaintiff,

-against-

KIMBAL VISCUSO, CHARLES M. BIRNS  
and BETH S. MARTIN-BIRNS

Defendants.

**Civil Action No. 08 Civ. 1141 (WCC)**

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that upon the accompany Brief and Certification of Counsel with exhibits, dated April 8, 2008, interpleader-defendant Kimbal Viscuso will move before the Honorable William C. Connor, United States District Judge, 300 Quarropas St., Room 630, White Plains, NY 10601, for the entry of an Order in the form submitted herewith, dismissing this action pursuant to Fed. R. Civ. P. 12(b)(1) or (6), or in the alternative dismissing the matter under the Court's inherent discretionary right to abstain from hearing an action in equity, including interpleader, or in the alternative for summary judgment awarding defendant Viscuso the full policy proceeds;

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Rules of this Court, opposing papers, if any, are required to be filed as directed by the Court at the pre-motion confernece; and

**PLEASE TAKE FURTHER NOTICE** that defendant requests oral argument on its motion in the event that opposition papers are filed.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,

Plaintiff,

-against-

KIMBAL VISCUSO, CHARLES M. BIRNS  
and BETH S. MARTIN-BIRNS

Defendants.

**Civil Action No. 08 Civ. 1141 (WCC)**

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**DEFENDANT KIMBAL VISCUSO'S MOTION TO DISMISS  
THE WILLIAM PENN LIFE INSURANCE COMPANY  
OF NEW YORK'S ACTION IN INTERPLEADER**

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### PRELIMINARY STATEMENT

Plaintiff The William Penn Life Insurance Company Of New York (“William Penn”) has brought an action for statutory interpleader pursuant 28 U.S.C. §1335(a) seeking to extinguish a pending state law lawsuit which seeks the payment of life insurance proceeds to interpleader-defendant Kimbal Viscuso (“Viscuso”), and to be “discharged from all further liability on the policy or for the proceeds payable on it.” (Certification of M. Trevor Lyons, Paragraph 3, Exhibit A [Complaint, *ad damnum* clause, paragraphs 1 and 3])(“Lyons Cert., ¶3, Exh. A [Complaint, *ad damnum* clause, paragraphs 1 and 3]”). Interpleader, however, while statutorily sanctioned, is fundamentally an equity proceeding. Therefore, defendant Viscuso now moves pursuant to Fed Rule of P. 12(b)(1) and (6) to dismiss William Penn’s action in interpleader because: (a) plaintiff William Penn is not a disinterested stake holder, and therefore lacks the clean hands necessary to maintain an action in equity; and (b) because abstention is appropriate because William Penn has an adequate remedy at law that will in fact more equitably and completely resolve this matter.

In the alternative, if this Court decides to retain this matter, summary adjudication should be granted to defendant Visco. Specifically, it is undisputed that William Penn mistakenly accepted a change of beneficiary form that was invalid because the power of attorney by which the change form was executed did not “include the authority to change the name of any beneficiary in any retirement asset or insurance contract” (Lyons Cert., ¶5-6, Exh. C. and Exh. D). Therefore, pursuant to applicable law, the transaction by which the beneficiary was changed was void *ab initio*, and as result under the express terms of the policy the only proper beneficiary was Viscuso.

While perhaps William Penn’s conduct created a reasonable expectation of benefits in the party that sought to change the beneficiary, defendants Charles M. Birns And Beth S. Martin-Birns, which could serve as a claim by them for *ex delicto* damages, that fact is irrelevant to



defendant Viscuso's primary right claim to the policy benefits under applicable law. Therefore, Viscuso is, as a matter of law, based upon the undisputed documents referenced in the parties' original pleadings, entitled to a judgment award her the full policy proceeds.

### **STATEMENT OF FACTS**

There are only few facts, readily apparent on the face of plaintiff William Penn's Complaint, or which the Court make take judicial notice of, necessary to decide this Motion in defendant Viscuo's favor:

- On or about November 8, 1995, William Penn issued life insurance policy 070014261 insuring the life of Jon Fieldman (Complaint, ¶9). The policy was in the face amount of \$350,000. (Complaint, ¶10). The owner of the policy was Jon Fieldman. (Complaint, ¶11) The designated beneficiary of the policy was Kimbal Viscuso, (Complaint, ¶12);
- Plaintiff William Penn pleads that:

“On or about November 13, 2006, William Penn received a “Beneficiary Change Form” signed by Michael Birns, acting pursuant to a “Durable Power of Attorney” executed by Jon Fieldman dated January 31, 2005.” (Complaint, ¶13). The Primary Beneficiaries indicated on the form submitted by Michael Birns were Charles M. Birns and Beth S. Martin-Birns. (Complaint, ¶14). On or about November 13, 2006, William Penn sent a written notification of the purported change of beneficiary to Jon Fieldman. (Complaint, ¶15). Upon information and belief, Jon Fieldman died on April 4, 2007. (Complaint, ¶16)

Importantly, while not pled, William Penn has also acknowledged that it made a mistake in honoring a request to change beneficiaries to others under a Durable Power of Attorney because the Durable Power of Attorney expressly excluded the right to change beneficiaries, i.e., “shall not include authority to change the name of any beneficiary in any retirement or insurance contract.” (Lyons Cert., ¶4, Exh. B).

- Subsequent to the death of Jon Fieldman, Michael Birns notified William Penn that the proceeds of the subject policy were claimed on behalf of Charles Birns and Beth S. Martin-Birns. (Complaint ¶17).
- Kimbal Viscuso has notified William Penn that she is claiming the proceeds of the subject policy as the “named beneficiary.” (Complaint ¶18). In fact, defendant Kimbal has initiated a civil action in the Superior Court of New Jersey, Monmouth Vicinage, entitled “Kimbal Viscuso vs. William Penn Life Insurance Company Of New York” which was docketed “Mon-L-5721-07.” (Lyons Cert., ¶4, Exh. B). That action seeks payment of the entire proceeds from the relevant life insurance policy to defendant Kimbal Viscuso, and further alleges negligence by plaintiff William Penn in honoring a request to change beneficiaries to other than defendant Viscuso under a Durable Power of Attorney because the Durable Power of Attorney expressly excluded the right to change beneficiaries, i.e., “shall not include authority to change the name of any beneficiary in any retirement or insurance contract.” Id.

## LEGAL ARGUMENT

### POINT I

#### **PLAINTIFF WILLIAM PENN LACKS THE CLEAN HANDS NECESSARY TO FILE THE PRESENT ACTION AS IT BROUGHT ABOUT OR CAUSED THE DISPUTE THAT IT WOULD NOW HAVE RESOLVED BY INTERPLEADER.**

Interpleader, while statutorily sanctioned at 28 U.S.C. 1335, is nonetheless fundamentally an equity proceeding. Irving Trust Co. v. Nationwide Leisure Corp., 93 F.R.D. 102, 110 (S.D.N.Y. 1981)(Statutory “[i]nterpleader is an equitable device...”); Truck-A-Tune, Inc. v. Re 23 F.3d 60, (2d Cir 1994)(same); U.S.--First Nat. Bank of Ft. Worth v. U.S., 633 F.2d 1168, 1172 (5<sup>th</sup> Cir. 1981)(“... interpleader actions, even involving the IRS, are equitable in nature.”).<sup>1</sup> As such, an interpleader is subject to dismissal based upon the doctrine of unclean hands. Bell v Nutmeg Airways Corp., 66 FRD 1, 4 (D.C. Conn. 1975)(recognizing that both laches and unclean hands are available defenses that could bar an action in interpleader); Great Am. Ins. Co. v. Bank of Bellevue, 366 F.2d 289, 293 (8<sup>th</sup> Cir. 1966)(“Interpleader is an equitable action controlled by equitable principles”); Burchfield v. Bevans, 242 F.2d 239 (10<sup>th</sup> Cir. 1957); Brinson v. Brinson, 334 F.2d 155 (4<sup>th</sup> Cir. 1964), and the equitable doctrine that one seeking equitable relief must do equity and come into court with clean hands is applicable. Austin v. Texas-Ohio Gas Company, 218 F.2d 739 (5<sup>th</sup> Cir. 1955) (citations in original)).

As a result, a party is not entitled to interpleader relief if the hazard which he seeks to avoid has been occasioned by his own act. Pan American Fire & Casualty Co. v Revere, 188 F Supp 474, 481 (E.D. La. 1960)(“if the hazard which plaintiff seeks to avoid has been occasioned

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<sup>1</sup> See also American-Hawaiian Steamship Co. v. Bowring & Co., 150 F.Supp. 449, 453 (S.D. N.Y. 1957)(“The Federal Interpleader Act did not change the equitable nature of interpleader. It merely extended the jurisdiction of the Federal Courts to cover the circumstances which it describes.”).

by his own act he is not entitled to the remedy”); U.S. v. Major Oil Corp., 583 F.2d 1152, 1158 (10<sup>th</sup> Cir. 1978)(“Thus, one is not entitled, under the ‘clean hands’ doctrine, to the remedy of interpleader (or the protections provided thereby) if the hazard which he seeks to avoid has been occasioned by his own act.”). As a result, a party seeking interpleader must be free from blame in causing the controversy, and where he stands as a wrongdoer with respect to the subject matter of the suit, interpleader will not be available. Mallory S.S. Co. v. Thalheim, 277 F. 196, 201-202 (2d Cir. 1921)(“Where it appears that as to any of the defendants the complainant is a wrongdoer, his bill of interpleader cannot be sustained.”); Pan American Fire & Casualty Co., 188 F Supp. at 481-82 (“One application of the rule is that ‘a tortfeasor cannot obtain protection in an action in the nature of interpleader against the consequences of his own wrong’”); Farmers Irrigating Ditch & Reservoir Co. v. Kane, 845 F.2d 229 (10<sup>th</sup> Cir. 1988) (“It is the general rule that a party seeking interpleader must be free from blame in causing the controversy, and where he stands as a wrongdoer with respect to the subject matter of the suit or any of the claimants, he cannot have relief by interpleader”). This bar to interpleader can also include the situation in which there independent basis of liability against the stakeholder for the amount of the fund. American-Hawaiian S. S. Co. v. Bowring & Co., 150 F.Supp. 449, 454-55 (S.D.N.Y.1957)(“Nevertheless, the better reasoned view seems to be that a party seeking relief in interpleader must show the non-existence of an independent liability to any of the interpleaded parties apart from the liability represented by the fund on deposit.”); Poland v. Atlantis Credit

Corp., 179 F.Supp. 863, 866-67 (S.D.N.Y.1960)(same).<sup>2</sup>

In this case, in a state law action defendant Viscuo has alleged negligence by plaintiff William Penn in honoring a request to change beneficiaries to other than defendant Viscuso under a Durable Power of Attorney because the Durable Power of Attorney expressly excluded the right to change beneficiaries, i.e., “shall not include authority to change the name of any beneficiary in any retirement or insurance contract.” (Lyons Cert., ¶5, Exh. D). Thus, the present controversy would not exist if plaintiff William Penn had requested, reviewed and acted in accordance with the relevant Power of Attorney before improperly changing the policy beneficiary. Therefore, because the present dispute between competing claimants to the relevant life insurance proceeds is the result of plaintiff William Penn’s own misconduct and/or negligence, it lacks the clean hands necessary to obtain interpleader. Moreover, William Penn simply cannot establish “the non-existence of an independent liability to any of the interpleaded parties apart from the liability represented by the fund on deposit”, and therefore should be barred from seeking interpleader on those grounds as well. American-Hawaiian S. S. Co., 150 F.Supp. at 454-55. For example, in Trowbridge v. Prudential Ins. Co. of America, 322 F.Supp. 190, 192 (D.C.N.Y. 1971), based upon facts that are almost identical to the facts of this case, the Court stated:

In the instant case, the additional defendants claim that Prudential owes them the amount in question as the result of an insurance contract signed in 1936. By contrast, Grace Trowbridge bases her claim on a theory of negligent misrepresentation and/or contract

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<sup>2</sup> It should also be noted that paragraph 7 of William Penn’s Complaint states that it will move for an Order permitting the deposit of the full amount of the disputed proceeds. Nonetheless, the actual deposit of such proceeds is a jurisdictional prerequisite to interpleader relief. Coopers & Lybrand, L.L.P. v. Michaels, No. 94-CV-5643, 1995 WL 860760, at \*9 (E.D.N.Y. Oct. 31, 1995) (explaining that “a jurisdictional prerequisite to statutory interpleader is that the stakeholder deposit a bond in the highest amount that the claimants “are claiming or may claim to be entitled”) (quoting Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Ambassador Group, Inc., 691 F.Supp. 618, 621 (E.D.N.Y.1988)) (citing cases therein).

estoppel grounded in acts committed by Prudential in 1968. These are independent causes of action, not adverse to one another, which rely on separate and distinct elements. It is clearly possible that more than a single obligation is owed, and the possibility of a double recovery justified by law is very real. Odum v. Penn Mutual Life Insurance Co., 288 F.2d 744 (5th Cir. 1961), Phillips v. Continental Assurance Co., 210 Pa.Super. 178, 231 A.2d 422 (1967), McNevin v. Metropolitan Life Insurance Co., 160 Misc. 468, 290 N.Y.S. 44 (1936), American Motorists Insurance Co. v. Oakley, 172 Misc. 319, 14 N.Y.S.2d 883 (1939).

Accordingly, Prudential's motion to interplead the additional defendants with Grace Trowbridge is denied.

In sum, William Penn lacks the necessary clean hands to obtain interpleader, and, because of its potential negligence, it is not a disinterested stakeholder such that it can avail itself of interpleader.

## POINT II

**EVEN IF PLAINTIFF WILLIAM PENN COULD MAINTAIN AN ACTION IN INTERPLEADER, THIS COURT SHOULD EXERCISE DISCRETION AND ABSTAIN FOR ALLOWING THIS MATTER TO GO FORWARD BECAUSE THE PARTIES HAVE AN ADEQUATE REMEDY AT LAW.**

In Quackenbush v. Allstate Ins. Co., 517 U.S. 706, ----, 116 S.Ct. 1712, 1722, 135 L.Ed.2d 1 (1996), the United States Supreme Court stated “[W]e have recognized that the authority of a federal court to abstain from exercising its jurisdiction extends to all cases in which the court has discretion to grant or deny relief.” Therefore, because the relief that plaintiff William Penn seeks by way of interpleader in this case is discretionary, and there is an adequate and in fact more complete remedy at law in a concurrent state court action, this Court should abstain and not allow this matter to proceed further in federal court. American Airlines, Inc. v. Block, 905 F.2d 12, 14 (2<sup>nd</sup> Cir. 1990) (“Correlatively, it is well recognized that interpleader is an equitable remedy, and a federal court may abstain from deciding an interpleader action if another action could adequately redress the threat that the stakeholder might be held doubly liable.”); Truck-A-Tune, Inc., 23 F.3d at 63 (same); National Union Fire Ins. Co. of Pittsburgh, Pa. v. Karp, 108 F.3d 1 (2<sup>nd</sup> Cir. 1997)(Supreme Court's *Wilton* rule, allowing district courts to exercise discretion in determining whether to abstain from deciding insurance coverage issue in declaratory judgment action, was applicable when issue of insurance coverage was raised in declaratory judgment claim inside federal interpleader action). For example, Professor Moore, who is in agreement with this position, has stated:

...It should also be within the discretion of the interpleader court, sitting as a court of equity, to decline to exercise jurisdiction when there is an action pending elsewhere wherein the liability of the

stakeholder to all claimants may be fairly and conclusively determined. In such a case, the fear of multiple vexation and inconsistent liability which serves as the premise for interpleader relief may be absent; this, in addition to the prior lodging of jurisdiction in another tribunal, may properly convince the interpleader court that it is both safe and prudent to stay its hand. If these conditions are met, there is no reason to believe that the interpleader statute compels the exercise of jurisdiction, thus depriving the court of the discretion traditionally exercised to deny equitable relief when there is another adequate remedy "at law." There is strong support for this proposition in the federal cases.

3A Moore, Federal Practice, par. 22.16(1), at 3138 (2d Ed. 1967); See also Koehring Company v. Hyde Construction Company, 424 F.2d 1200 (7<sup>th</sup> Cir. 1970)(citing Professor Moore); Metropolitan Life Ins. Co. v. Scott, 587 F.Supp. 451, (D.C.Pa. 1984)(When an action already is pending against the insurance carrier in one forum where interpleader is equally available, either as an independent action or by way of counterclaim, interpleader should not be tried in another forum, absent exceptional circumstances.).

In this case, there is pending before the Superior Court of New Jersey, Monmouth Vicinage, a civil action entitled "Kimbal Viscuso vs. William Penn Life Insurance Company Of New York" which was docketed "Mon-L-5721-07." (Lyons Cert., ¶4, Exh. B). That action seeks payment of the entire proceeds from the relevant life insurance policy to defendant Kimbal Viscuso, but also further alleges negligence by plaintiff William Penn in honoring a request to change beneficiaries to other than defendant Kimbal Viscuso under a Durable Power of Attorney because the Durable Power of Attorney expressly excluded the right to change beneficiaries, i.e., "shall not include authority to change the name of any beneficiary in any retirement or insurance contract." Id. Accordingly, there is a pending state law claim that brings all applicable issues before a court of law.



New Jersey permits interpleader pursuant to Rule 4:31 of its Rule of Court either by way of affirmative claim or counter-claim. Therefore, William Penn has an adequate remedy at law and can either seek an interpleader in state court, or simply defend the pending action and afterwards seek an estoppel as to any future claims to the relevant life insurance proceeds on comity grounds. Frankly, however, what William Penn should not be permitted to do is seek to have the possibility that it may be required to answer in negligence extinguished by an action in interpleader seeking to be “discharged from all further liability on the policy or for the proceeds payable on it.” (Lyons Cert., ¶3, Exh. A [Complaint, *ad damnum* clause, paragraphs 1 and 3]).<sup>3</sup> Therefore, if this Court determines that William Penn’s negligence/unclean hands does not bar it from seeking an interpleader, it should nonetheless abstain because there is pending state court action that presents all possible claims, and in which William Penn has an adequate remedy at law.

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<sup>3</sup> In this regard, if William Penn’s interpleader action is permitted to go forward, its claim that it should be “discharged from all further liability on the policy or for the proceeds payable on it”, must be denied, and defendant Viscuso permitted to prosecute a compulsory counterclaim for negligence, or her state claim should not be dismissed.

### POINT III

**IF THIS COURT RETAINS JURISDICTION, DEFENDANT VISCUSO IS ENTITLED TO THE FULL POLICY PROCEEDS AS A MATTER OF LAW AND REGARDLESS OF THE OTHER DEFENDANTS *EX DELICTO* CLAIMS.**

It is generally held that, where an attempt to change the beneficiary in a life insurance policy or benefit certificate has been unsuccessful, the prior beneficiary is entitled to the proceeds of the policy, his rights being unimpaired by the attempted change. For example, in Trowbridge v. Prudential Ins. Co. of Am., 322 F. Supp. 190, 193-94 (S.D.N.Y. 1971), the deceased had written to the insurer seeking to change the beneficiary to his wife and the insurance company had erroneously endorsed the policies and informed the insured wife that she was now the beneficiary. It turned out that change in beneficiary was in error, and that early beneficiary should still have taken. The wife brought *ex delicto* claims for negligent misrepresentation and contract estoppel. Despite, these claims, the District Court granted them original beneficiaries summary judgment stating:

The additional defendants base their claim for relief directly on the insurance policy itself. That they are justified in their quest for recovery appears to have been all but admitted by Prudential in its answering papers. There, Prudential admits that it had no right to change beneficiaries in the manner done, and refers to this change as 'the result of an unintentional mistake and inadvertent clerical error.' Indeed, Prudential goes on to state in its answer that-

'Defendant desires and requires that each of the aforementioned policies be reformed to remove the endorsements changing the beneficiary under each of said policies to the plaintiff and for the restoration of each of said policies to the status thereof prior to the making of said endorsements.'

A motion for summary judgment will lie whenever there is no genuine issue as to any material fact. And, while it has been stated many times that summary judgment is a 'blunt instrument' which should be used only in moderation, it must be remembered that cases holding that courts should be slow to grant summary judgment, leaning always to the side of caution and restraint, must be limited to their facts lest Rule 56 of the Federal Rules lose its effectiveness and meaning.

Rule 56 states in part, ‘The judgment sought shall be rendered forthwith if \* \* \* there is no genuine issue as to any material fact and \* \* \* the moving party is entitled to a judgment as a matter of law.’ Such is the nature of the case now before us. Accordingly, the motion of the additional defendants for summary judgment against the Prudential Life Insurance Company of America for an amount equal to the proceeds of the insurance policies plus interest is granted.

Similarly, in this case William Penn changed the beneficiary on the relevant life insurance policy pursuant to a durable power of attorney that did not “include the authority to change the name of any beneficiary in any retirement asset or insurance contract” (Lyons Cert., ¶ 6, Exh. D). Accordingly, that change was void *ab initio*, and pursuant to well established law defendant Viscuso as the prior beneficiary is entitled to the proceeds of the policy, her rights being unimpaired by the attempted change. State Farm Life Ins. Co. v. Gutterman, 896 F.2d 116 (5th Cir. 1990); Ward v. Stratton, 988 F.2d 65 (8th Cir. 1993); Androvette v. Treadwell, 73 N.Y.2d 746, 536 N.Y.S.2d 43, 532 N.E.2d 1271 (1988); Campbell v. Metropolitan Life Ins. Co., 812 F. Supp. 1173 (E.D. Okla. 1992); Stavros v. Western & Southern Life Ins. Co., Inc., 486 S.W.2d 712 (Ky. 1972).<sup>4</sup> This is the case regardless of what representation were made to defendants Charles M. Birns And Beth S. Martin-Birns, that would support their *ex delicto* claims for negligent representation and contractual estoppel.

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<sup>4</sup> At the pre-motion conference, counsel for William Penn indicated that the relevant policy called for the application of Arizona law. After diligent review, as counsel for Viscuso, we cannot find any Arizona choice of law requirement in the relevant policy (Lyons Cert., ¶5, Exh. C. ). Nonetheless, even if Arizona law were to apply, the outcome would be the same. Specifically, Arizona law requires that the method of changing beneficiaries as set out in the insurance contract must be strictly followed. There are, however, three exceptions to this general rule requiring strict compliance with the provisions and they are: (1) if the insurer has waived strict compliance; (2) if it is beyond the power of the insurer to comply literally with the regulations, equity will treat the change as regularly made; and (3) if the insured has done all in his power to effect the change, but before the change is completed he dies, equity will treat the change as having been made. Schlade v. Arizona State Retirement System, 109 Ariz. 396, 510 P.2d 42 (1973). None of these exception, however, would permit modification in this case, and again defendant Viscuso as the prior beneficiary would be entitled to the proceeds of the policy, her rights being unimpaired by the invalid attempted change.

Therefore, if this Court retains jurisdiction of this matter, defendant Viscuso is entitled to a judgment as a matter of law awarding her the entire policy proceeds because she is the original/prior beneficiary whose rights were unimpaired by the attempted, albeit admitted unsuccessful change. These defendants would retain whatever quasi-contractual/ tort/negligence actions they may have against William Penn for its failure to check the durable power of attorney, but their rights in no way impede defendant Viscuso's rights to the policy proceeds. Trowbridge, 322 F. Supp. at 193-94.

**CONCLUSION**

For the foregoing reasons, William Penn's Complaint In Interpleader should be dismissed pursuant to Rule 12(b) (1) or (6), or in the alternative this Court should grant defendant Viscuso a judgment permitting her withdraw of the entire policy limit or for an amount equal the entire policy as against interpleader plaintiff William Penn.

CONNELL FOLEY LLP  
Attorneys for Interpleader-Defendant  
Kimbal Viscuso

BY:   /s/ M. Trevor    
M. Trevor Lyons

DATED: April 24, 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,

Plaintiff,

-against-

KIMBAL VISCUSO, CHARLES M. BIRNS  
and BETH S. MARTIN-BIRNS

Defendants.

Civil Action No. 08 Civ. 1141 (WCC)

**CERTIFICATION OF M. TREVOR  
LYONS IN SUPPORT OF KIMBAL  
VISCUSO'S MOTION TO DISMISS OR  
FOR SUMMARY JUDGMENT**

**M. Trevor Lyons**, being of full age, hereby certifies and states:

1. I am an attorney at law of the State of New York and associated with the law firm of Connell Foley LLP, attorneys for interpleader-defendant Kimbal Viscuso ("Viscuso"). I make this Certification in support of defendant Viscuso's Motion to dismiss this matter pursuant to pursuant to Fed. R. Civ. P. 12(b)(1) or (6), or in the alternative dismissing the matter under the Court's inherent discretionary right to abstain from hearing an action in equity, including interpleader, or to grant defendant Viscuso summary judgment for the entire relevant policy proceeds.

2. In particular, I make this Certification to place before the Court certain materials necessary for the Court's disposition of defendant Viscuso's Motion.

3. On or about February 4, 2008, plaintiff The William Penn Life Insurance Company Of New York ("William Penn") filed a Complaint asserting interpleader jurisdiction pursuant to 28 U.S.C. §1335. Attached hereto as Exhibit A is a true and accurate copy of that Complaint. Importantly, paragraph 7 of that Complaint asserts that after filing the Complaint "plaintiff will move for an order permitting the deposit of the full amount of the disputed proceeds into the registry of this Court" admitting that William Penn has not perfected the steps necessary for interpleader jurisdiction.

4. On December 4, 2007, defendant Kimbal has initiated a civil action in the Superior Court of New Jersey, Monmouth Vicinage, entitled "Kimbal Viscuso vs. William Penn Life Insurance Company Of New York" which was docketed "Mon-L-5721-07." That action seeks payment of the entire proceeds from the relevant life insurance policy to defendant Kimbal Viscuso, and further alleges negligence by plaintiff William Penn in honoring a request to change beneficiaries to other than defendant Viscuso under a Durable Power of Attorney because the Durable Power of Attorney expressly excluded the right to change beneficiaries, i.e., "shall not include authority to change the name of any beneficiary in any retirement or insurance contract." Attached hereto as Exhibit B is a true and accurate copy of the Complaint filed in that action.

5. Attached hereto as Exhibit C is a true and accurate specimen copy of the life insurance policy that was provided to defendant Viscuso by plaintiff William Penn during the course of discovery in the New Jersey action.

6. Attached hereto as Exhibit D is a true and accurate specimen copy of the durable power of attorney that was provided to defendant Viscuso by plaintiff William Penn during the course of discovery in the New Jersey action.

I have prepared and reviewed the foregoing Certification, consisting of six paragraphs paragraphs, and certify that to the best of my knowledge, the statements contained herein are true, and that the exhibits attached hereto are true and correct copies of the originals.

  
M. Trevor Lyons

Dated: April 24, 2008

# Exhibit A



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,

Plaintiff,

-against-

KIMBAL VISCUSO, CHARLES M. BIRNS  
and BETH S. MARTIN-BIRNS,

Defendants.

COMPLAINT FOR  
INTERPLEADER

(28 U.S.C. § 1335(a))

CIVIL ACTION NO.: 08 Civ. 1141(WCC)

Plaintiff, The William Penn Life Insurance Company of New York ("William Penn"),  
complaining of defendants, by its attorneys Bleakley Platt & Schmidt, LLP, alleges:

JURISDICTION AND VENUE

1. Plaintiff is a corporation organized and existing pursuant to the laws of the State of New York, with its offices and principal place of business located in the County of Nassau, State of New York.
2. At all times hereinafter mentioned, plaintiff was authorized by the New York State Insurance Department to engage in the business of the issuance of policies of life insurance.
3. Upon information and belief, defendant Kimbal Viscuso is an individual who is a citizen of the State of New Jersey.
4. Upon information and belief, defendant Charles M. Birns is an individual who is a citizen of the State of New York and a resident of the County of Westchester.
5. Upon information and belief, defendant Beth S. Martin-Birns is an individual who is a citizen of the State of New York and is a resident of the County of Westchester.

6. This Court has jurisdiction over this statutory interpleader action pursuant to the provisions of 28 U.S.C. § 1335(a) because there is diversity of citizenship between claimant Kimbal Viscuso and claimants Charles M. Birns, and Beth S. Martin-Birns, and because, as more fully explained below, they are asserting adverse claims to the proceeds of a life insurance policy that is in an amount in excess of \$500.

7. This Court has jurisdiction over this statutory interpleader action pursuant to the provisions of 28 U.S.C. § 1335(2) because after the filing of this complaint the plaintiff will move for an order permitting the deposit of the full amount of the disputed proceeds into the registry of this Court.

8. This Court is the proper venue for this action under 28 U.S.C. § 1397 because the residence of defendants and claimants Charles M. Birns and Beth S. Martin-Birns is within the judicial district.

#### SUMMARY OF ADVERSE CLAIMS

9. On or about November 8, 1995, William Penn issued life insurance policy 070014261 insuring the life of Jon Fieldman.

10. The policy was in the face amount of \$350,000.

11. The owner of the policy was Jon Fieldman.

12. The designated beneficiary of the policy was Kimbal Viscuso.

13. On or about November 13, 2006, William Penn received a "Beneficiary Change Form" signed by Michael Birns, acting pursuant to a "Durable Power of Attorney" executed by Jon Fieldman dated January 31, 2005.

14. The Primary Beneficiaries indicated on the form submitted by Michael Birns were Charles M. Birns and Beth S. Martin-Birns.

15. On or about November 13, 2006, William Penn sent a written notification of the purported change of beneficiary to Jon Fieldman.

16. Upon information and belief, Jon Fieldman died on April 4, 2007.

17. Subsequent to the death of Jon Fieldman, Michael Birns notified William Penn that the proceeds of the subject policy were claimed on behalf of Charles Birns and Beth S. Martin-Birns.

18. Kimbal Viscuso has notified William Penn that she is claiming the proceeds of the subject policy as the "named beneficiary."

19. Under the terms of the policy, there is now due the sum of \$350,000 with interest from April 4, 2007 pursuant to New York Insurance Law § 3214.

20. There is no dispute as to the amount payable under the policy.

21. William Penn is indifferent and disinterested as to which of the defendants is entitled to the proceeds of the policy or to the division of the proceeds between them. William Penn is unable to determine to whom the amount due under the policy is payable and is unable to safely determine which of the defendants is entitled to that amount. As a result of these adverse claims, William Penn is or may be exposed to double liability.

22. The whole amount of the proceeds or a part thereof is claimed adversely by the defendants, without any collusion on the part of William Penn.

23. In pursuing this interpleader action, William Penn has incurred costs and attorney's fees in an amount to be shown at a hearing on the propriety of proceeding with this interpleader action.

WHEREFORE, plaintiff demands judgment:

(1) That each of the defendants be restrained from instituting or maintaining any action against the plaintiff for the recovery of the proceeds of William Penn life insurance policy 070014261 or any action seeking any part of these proceeds;

03/19/2008 14:52 FAX 9734250161

MCELROY DEUTSCH MULVANEY

008/008

- (2) Requiring defendants to interplead together concerning their claims to the proceeds;
- (3) That plaintiff be discharged from all further liability on the policy or for the proceeds payable on it;
- (4) That plaintiff be awarded its costs and attorney's fees incurred in this action; and
- (5) For such other and further relief as the Court deems just and proper, together with expenses, costs and disbursements of this action payable from the proceeds of the subject policy.

Dated: White Plains, New York  
February 4, 2008

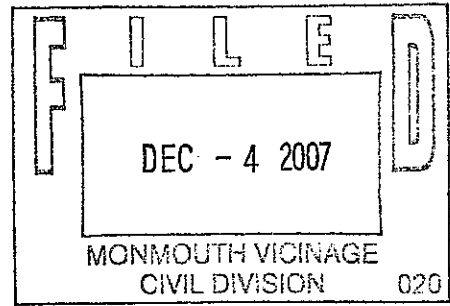
BLEAKLEY PLATT & SCHMIDT, LLP

BY: Robert D. Meade  
ROBERT D. MEADE (RM8324)

*Attorneys for Plaintiff*  
ONE NORTH LEXINGTON AVENUE  
P.O. BOX 5056  
WHITE PLAINS, NY 10602-5056  
(914) 949-2700

# Exhibit B

CONNELL FOLEY LLP  
85 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 535-0500  
Attorneys for Plaintiff, Kimbal Viscuso



KIMBAL VISCUSO,  
  
Plaintiff,

vs.

WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,  
  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY

DOCKET NO.: L-5721-07

Civil Action

**COMPLAINT**

Plaintiff, KIMBAL VISCUSO by way of Complaint against  
Defendant, WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK, says:

**FIRST COUNT**

1. The Plaintiff, Kimbal Viscuso, resides at 300 Spring Street,  
Red Bank, New Jersey.

2. The Defendant, William Penn Life Insurance Company of New York  
(hereinafter "William Penn"), has corresponded with Plaintiff utilizing  
the address 100 Quentin Roosevelt Boulevard, P.O. Box 519, Garden City,  
New York 11530.

3. Defendant, William Penn has acknowledged that Plaintiff is the  
sole beneficiary of a \$300,000.00 (Three Hundred Thousand Dollar) life  
insurance policy of the life of Jon Fieldman, Deceased, Policy Number  
0700014261.

4. Defendant, William Penn has also acknowledged that it made a  
mistake in honoring a request to change beneficiaries to others under a  
Durable Power of Attorney because the Durable Power of Attorney expressly

excluded the right to change beneficiaries, i.e., "shall not include authority to change the name of any beneficiary in any retirement or insurance contract."

5. Because of its "mistake," Defendant, William Penn has withheld payment of the policy proceeds from the Plaintiff, Kimbal Viscuso.

6. Plaintiff, Kimbal Viscuso is entitled to immediate payment of the entire policy proceeds, plus interest, attorneys' fees and costs.

WHEREFORE, Plaintiff demands judgment of:

1. The entire policy proceeds;
2. Interest of the proceeds for the period of delayed payment;
3. Attorney's fees and costs.

CONNELL FOZEY LLP  
Attorneys for Plaintiff



RICHARD D. CATENACCI

DATED: December 3, 2007.

CERTIFICATION

Pursuant to R. 4:5-1, plaintiff hereby certifies that to the best of plaintiff's knowledge, there are no other Court actions or Arbitration proceedings pending.

CONNELL FOLEY LLP  
Attorneys for Plaintiff



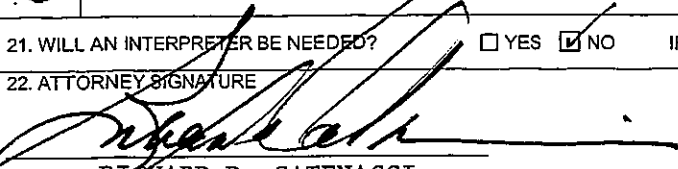


RICHARD D. CATENACCI

DATED: December 3, 2007.



## Appendix XII-B

 <b>CIVIL CASE INFORMATION STATEMENT</b> (CIS)		FOR USE BY CLERK'S OFFICE ONLY
Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 <b>Pleading will be rejected for filing, under Rule 1:5-6(c), if            information above the black bar is not completed or if            attorney's signature is not affixed.</b>		PAYMENT TYPE: CK CG CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
1. ATTORNEY/PRO SE NAME <b>RICHARD D. CATENACCI, ESQ.</b>	2. TELEPHONE NUMBER <b>(973) 535-0500</b>	3. COUNTY OF VENUE <b>MONMOUTH COUNTY</b>
4. FIRM NAME (If applicable) <b>CONNELL FOLEY LLP</b>		5. DOCKET NUMBER (When available)
6. OFFICE ADDRESS <b>85 Livingston Avenue Roseland, New Jersey 07068</b>		7. DOCUMENT TYPE <b>COMPLAINT</b>
9. NAME OF PARTY (e.g. John Doe, Plaintiff) <b>KIMBAL VISCUSO, Plaintiff</b>		8. JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
10. CAPTION <b>Kimbal Viscuso v. William Penn Life Insurance Company of New York</b>		
11. CASE TYPE NUMBER (See reverse side for listing) <b>599 - Contract</b>	12. IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <small>IF YOU HAVE CHECKED "YES", SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.</small>	
13. RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	14. IF YES, LIST DOCKET NUMBERS	
15. DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	16. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN	
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>		
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION		
17. A. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> BUSINESS <input type="checkbox"/> FAMILIAL <input type="checkbox"/> OTHER (explain _____)	
18. B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
19. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:		
 20. DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION: _____	
21. WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
IF YES, FOR WHAT LANGUAGE: _____		
22. ATTORNEY SIGNATURE  <b>RICHARD D. CATENACCI</b>		

Revised effective 9/06

**SIDE 2****CIVIL CASE INFORMATION STATEMENT**

(CIS)

Use for initial pleadings (not motions) under Rule 4:5-1.

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

**Track II -- 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT - OTHER

**Track III -- 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV -- Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Mass Tort (Track IV)**

- |   |                                  |
|---|----------------------------------|
| 240 REDUX/PHEN-FEN (formerly "DIET DRUG") | 268 MANUFACTURED GAS PLANT (MGP) |
| 241 TOBACCO                               | 271 ACCUTANE                     |
| 248 CIBA GEIGY                            | 272 BEXTRA/CELEBREX              |
| 264 PPA                                   | 601 ASBESTOS                     |
| 266 HORMONE REPLACEMENT THERAPY (HRT)     | 619 VIOXX                        |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold

☐ Putative Class Action

☐ Title 59

# Exhibit C



# William Penn Life

## INSURANCE COMPANY OF NEW YORK

100 QUENTIN ROOSEVELT BLVD. • PO BOX 519  
GARDEN CITY, NY 11530

The Company will pay the Beneficiary the death benefit as set forth in the contract. Payment will be made after due proof of the Insured's death and written claim are received at the Home Office. Such proof must show that the Insured died:

- while this Policy was in force; and
- prior to the Maturity Date.

The Company will pay the Owner any Cash Surrender Value on the Maturity Date if the Insured is living on that date.

Any payment is subject to the provisions on this and the following pages.

The consideration for this Policy is the application and the payment of the initial premium on or before policy delivery. A copy of the application is attached to and made a part of this contract.

This contract has been signed for the Company at its Home Office on the Date of Issue.

*Mark A. Carter*

Secretary

*J. Brinelli*

Registrar

*Joseph M. Sullivan*

President

Flexible Premium Adjustable Life Insurance Policy  
Adjustable Death Benefit Payable Prior to the Maturity Date  
Flexible Premiums Payable During Insured's Lifetime to Maturity Date  
Non-Participating - No Dividends

### Notice Of Twenty-Day Right To Examine Contract

This is a legal contract between the Owner and William Penn Life. Read the Policy carefully. If the Owner is not satisfied with the contract, return it within 20 days to be cancelled. Return it to the Company at the address shown above, or to the agent who sold the Owner the contract. The Company will then return any payments made, and it will be as if no contract was issued.

L-FPA 5/91

# SPECIMEN

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SPECIMEN

## POLICY SCHEDULE

POLICY NUMBER: 0700014261

## SCHEDULE OF BENEFITS

FORM NUMBER	TYPE OF COVERAGE	AMOUNT	ANNUAL PREMIUM	RATING CLASS
L-FPA5/91	FLEXIBLE PREMIUM ADJUSTABLE LIFE	\$350,000.00	\$4,886.00	M-SMOKER

NOTE: IT IS POSSIBLE THAT THE CASH SURRENDER VALUE MAY BE SMALL OR NON-EXISTENT ON THE MATURITY DATE SHOWN OR THAT COVERAGE WILL EXPIRE PRIOR TO THE MATURITY DATE, WHERE EITHER PREMIUMS ARE NOT PAID OR INTEREST CREDITED IS INSUFFICIENT. IF THE CURRENT INTEREST RATE OR COST OF INSURANCE RATES CHANGE, THIS WILL AFFECT COVERAGE AND CASH SURRENDER VALUE AT THE MATURITY DATE.

MINIMUM CASH SURRENDER VALUES ARE BASED ON THE COMMISSIONERS 1980 STANDARD ORDINARY MORTALITY TABLE, WITH INTEREST AT 4%.

PLANNED ANNUAL PREMIUM:	\$4,886.00	OWNER:	JON FIELDMAN
PREMIUM PAYMENT INTERVAL:	ANNUAL	DATE OF ISSUE:	NOVEMBER 8, 1995
MATURITY DATE:	OCTOBER 13, 2043	POLICY DATE:	OCTOBER 13, 1995
INSURED: JON	FIELDMAN	POLICY NUMBER:	0700014261
AGE & SEX:	47 MALE	POLICY LOAN INTEREST RATE:	7.40% PER YEAR IN ADVANCE
BENEFICIARY:	SEE APPLICATION		
L-FPA5/91			

PAGE 3

SPECIMEN

## POLICY SCHEDULE (CONTINUED)

POLICY NUMBER: 0700014261

## INSURANCE COVERAGE INFORMATION:

INITIAL SPECIFIED AMOUNT:	\$350,000.00
CURRENT SPECIFIED AMOUNT:	\$350,000.00
MINIMUM SPECIFIED AMOUNT:	\$175,000.00
BENEFIT OPTION:	OPTION 1 (SPECIFIED AMOUNT)

## PREMIUM LIMITATION INFORMATION:

GUIDELINE LEVEL PREMIUM:	\$9,395.05
GUIDELINE SINGLE PREMIUM:	\$100,333.09

## EXPENSE CHARGES:

MONTHLY POLICY FEE:	\$6.25
ADMINISTRATION FEE FOR PARTIAL SURRENDER:	\$25.00

## INTEREST CREDITING:

THE MINIMUM GUARANTEED INTEREST RATE TO BE CREDITED IS 4%, EFFECTIVE ANNUALLY. THE POLICY ACCOUNT VALUE WHICH SECURES LOANS WILL BE CREDITED WITH AN EFFECTIVE ANNUAL INTEREST RATE EQUAL TO THE POLICY LOAN INTEREST RATE, LESS 2%.

THE CREDITING OF ANY EXCESS INTEREST WILL VARY BY THE AMOUNT BY WHICH THE ACCOUNT VALUE EXCEEDS POLICY INDEBTEDNESS, AS FOLLOWS:

<u>POLICY ACCOUNT VALUE IN EXCESS OF LOAN</u>	<u>TOTAL EFFECTIVE CREDITED INTEREST RATE</u>
LESS THAN \$10,000	CURRENT ANNUAL BASE RATE
\$10,000 - \$19,999	CURRENT ANNUAL BASE RATE + .50%
\$20,000 AND OVER	CURRENT ANNUAL BASE RATE + .75%

THE CURRENT ANNUAL BASE RATE WILL BE AS DETERMINED BY THE COMPANY AND MAY VARY DEPENDING UPON CURRENTLY EXPECTED INVESTMENT YIELDS. HOWEVER, THE CURRENT RATES ARE GUARANTEED NOT TO CHANGE DURING THE FIRST POLICY YEAR.

SPECIMEN

TABLE OF SURRENDER CHARGES

POLICY NUMBER: 0700014261

---

<u>POLICY YEAR</u>	<u>SURRENDER CHARGE</u>
1	14,441.00
2	13,409.50
3	12,378.00
4	11,346.50
5	10,315.00
6	9,283.50
7	8,252.00
8	7,220.50
9	6,189.00
10	5,157.50
11	4,126.00
12	3,094.50
13	2,063.00
14	1,031.50
15	0.00

SPECIMEN



## POLICY SCHEDULE (CONTINUED)

POLICY NUMBER: 0700014261

GUARANTEED MAXIMUM MONTHLY COST OF INSURANCE RATES PER \$1,000  
 RATING CLASSIFICATION: MALE SMOKER STANDARD

<u>POLICY YEAR</u>	<u>ATTAINED AGE</u>	<u>MAXIMUM RATE</u>	<u>POLICY YEAR</u>	<u>ATTAINED AGE</u>	<u>MAXIMUM RATE</u>
1	47	.62251	25	71	5.08855
2	48	.67630	26	72	5.55642
3	49	.73685	27	73	6.08662
4	50	.80082	28	74	6.66862
5	51	.87496	29	75	7.31730
6	52	.95760	30	76	7.99178
7	53	1.05216	31	77	8.68058
8	54	1.15868	32	78	9.37272
9	55	1.27212	33	79	10.08913
10	56	1.39507	34	80	10.86205
11	57	1.52246	35	81	11.71251
12	58	1.65858	36	82	12.66752
13	59	1.80005	37	83	13.73779
14	60	1.95717	38	84	14.88656
15	61	2.13432	39	85	16.07811
16	62	2.33420	40	86	17.27457
17	63	2.56130	41	87	18.45789
18	64	2.81241	42	88	19.76999
19	65	3.08515	43	89	21.08692
20	66	3.37018	44	90	22.42853
21	67	3.67025	45	91	23.82284
22	68	3.98026	46	92	25.33222
23	69	4.31179	47	93	27.31458
24	70	4.67927	48	94	29.94249

THESE RATES ARE BASED ON THE 1980 CSO MORTALITY TABLE, AGE NEAREST BIRTHDAY.

L-FPA5/91

PAGE 3C

SPECIMEN

WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
STATEMENT OF POLICY COST AND BENEFIT INFORMATION

STANDARD SUMMARY PENN OPTION FLEX

POLICY #:0700014261

AGE 47 M SMOKER

TABLE STANDARD

POLICY DATE:10/13/1995

ADJUSTABLE LIFE INSURANCE POLICY WITH LEVEL DEATH BENEFIT OPTION

INITIAL ANNUAL PREMIUM: 4886

INITIAL SPECIFIED AMOUNT: 350000

MATURITY DATE:10/13/2043

OTHER COVERAGES: NONE

POLICY YEAR	ANNUAL PREMIUM	BASED ON CURRENT FACTORS			BASED ON GUARANTEED FACTORS		
		POLICY ACCOUNT VALUE	CASH SURRENDER VALUE	DEATH BENEFIT	POLICY ACCOUNT VALUE	CASH SURRENDER VALUE	DEATH BENEFIT
01	4886	2778	0	350000	2458	0	350000
02	4886	5573	0	350000	4720	0	350000
03	4886	8376	0	350000	6838	0	350000
04	4886	11354	8	350000	8794	0	350000
05	4886	14475	4160	350000	10540	225	350000
06	4886	17754	8471	350000	12034	2751	350000
07	4886	21257	13005	350000	13218	4966	350000
08	4886	24962	17742	350000	14027	6807	350000
09	4886	28909	22720	350000	14416	8227	350000
10	4886	33139	27982	350000	14323	9166	350000
11	4886	37574	33448	350000	13703	9577	350000
12	4886	42199	39105	350000	12485	9391	350000
13	4886	47146	45083	350000	10607	8544	350000
14	4886	52394	51363	350000	7957	6926	350000
15	4886	57968	57968	350000	4389	4389	350000
16	4886	63768	63768	350000	0	0	0
17	4886	69725	69725	350000	0	0	0
18	4886	75834	75834	350000	0	0	0
19	4886	82092	82092	350000	0	0	0
20	4886	88517	88517	350000	0	0	0

AGE 60	4886	52394	51363	350000	7957	6926	350000
AGE 65	4886	82092	82092	350000	0	0	0
AGE 70	4886	116227	116227	350000	0	0	0

SPECIMEN

WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
STATEMENT OF POLICY COST AND BENEFIT INFORMATION

STANDARD SUMMARY PENN OPTION FLEX

POLICY #:0700014261

AGE 47 M SMOKER TABLE STANDARD  
POLICY DATE:10/13/1995

ADJUSTABLE LIFE INSURANCE POLICY WITH LEVEL DEATH BENEFIT OPTION

INITIAL ANNUAL PREMIUM: 4886  
INITIAL SPECIFIED AMOUNT: 350000  
OTHER COVERAGES: NONE

MATURITY DATE:10/13/2043

GUARANTEED VALUES ARE BASED UPON GUARANTEED COST OF INSURANCE AND EXPENSE CHARGES AND 4% INTEREST. CURRENT VALUES ARE BASED UPON THE CURRENT COST OF INSURANCE AND EXPENSE CHARGES AND THE CURRENT INTEREST RATE, WHICH VARIES BY POLICY ACCOUNT VALUES AS FOLLOWS:

POLICY ACCOUNT VALUE	CURRENT INTEREST RATE
0 - 9,999	6.50%
10,000 - 19,999	7.00%
20,000 AND OVER	7.25%

THE CURRENT INTEREST RATES ARE GUARANTEED NOT TO CHANGE DURING THE FIRST POLICY YEAR.

THE PORTION OF POLICY ACCOUNT VALUE WHICH EQUALS THE AMOUNT OF ANY UNPAID LOAN IS CREDITED WITH 6% INTEREST. ALL INTEREST RATES SHOWN ARE EFFECTIVE ANNUAL RATES. INTEREST IS CREDITED MONTHLY AFTER DEDUCTION OF EXPENSE AND COST OF INSURANCE CHARGES.

PREMIUMS ARE FLEXIBLE. PREMIUMS ILLUSTRATED ARE BASED ON INTENDED PREMIUMS AND, IF PAID OTHER THAN ANNUALLY, POLICY ACCOUNT VALUES AND CASH SURRENDER VALUES WILL BE LESS THAN IF PREMIUMS WERE PAID ON AN ANNUAL BASIS.

THE POLICY ACCOUNT VALUES, CASH SURRENDER VALUES AND DEATH BENEFIT ILLUSTRATED ARE END OF THE POLICY YEAR VALUES.

COVERAGE WILL CEASE IN YEAR 16 UNLESS THE PREMIUM IS INCREASED ON THE GUARANTEED BASIS.

THE POLICY LOAN INTEREST RATE IS 7.4% PAYABLE IN ADVANCE.

A SERVICE CHARGE OF \$25.00 WILL BE DEDUCTED FROM THE POLICY ACCOUNT VALUE EACH TIME A PARTIAL SURRENDER AMOUNT IS PAID.

THE TAX STATUS OF THIS CONTRACT AS IT APPLIES TO THE HOLDER OF THIS POLICY OR CONTRACT SHOULD BE REVIEWED EACH YEAR.

**SPECIMEN**

WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
STATEMENT OF POLICY COST AND BENEFIT INFORMATION

STANDARD SUMMARY PENN OPTION FLEX

POLICY #:0700014261

WILLIAM PENN LIFE INSURANCE COMPANY  
OF NEW YORK  
100 QUENTIN ROOSEVELT BLVD PO BOX 519  
GARDEN CITY, NEW YORK 11530EKA PLANNING SERVICES INC  
11 GRACE AVENUE  
SUITE 402  
GREAT NECK NY 11021  
PREPARED ON: 11/08/95

	GUARANTEED VALUES	PROJECTED VALUES
FLEXIBLE PREMIUM ADJUSTABLE LIFE		
10 YEAR SURRENDER COST	11.977	7.907
10 NET PAYMENT	13.960	13.960
20 YEAR SURRENDER COST	.000	6.676
20 YEAR NET PAYMENT	.000	13.960

AN EXPLANATION OF THE INTENDED USE OF THE INDICES IS PROVIDED IN THE LIFE  
INSURANCE BUYER'S GUIDE.

SPECIMEN

## General Provisions

### The Contract

This is a contract between the Owner and William Penn Life Insurance Company of New York (The Company). The entire contract consists of:

- this policy, and any attached riders, amendments and endorsements;
- the original application, a copy of which was attached at issue;
- any supplemental application, which will be made a part of the policy when a change goes into effect.

All statements made in an application are deemed representations and not warranties. No statements will void this Policy or be used in defense of a claim unless it is contained in the original or a supplemental application.

Only an Officer of the Company can change or waive any provision of this Policy. Any change or waiver must be made in writing.

### Policy Date, Month, Year and Anniversary

The policy date is stated in the policy schedule. Each policy month begins on the same day of each month as the policy date. The first day of each policy month is a monthly anniversary. Each policy year begins on the same day and month as the policy date. A policy anniversary occurs on the first day of each policy year after the first year.

### Owner and Beneficiary

The Owner is named in the Policy Schedule. The beneficiary is as stated in the application. These designations will remain in effect until changed by the Owner.

The Owner has rights as stated in the Policy. The Owner may amend this Policy during the Insured's lifetime with the Company's consent.

Unless otherwise specified, death proceeds will not be paid to a beneficiary who dies before, at the same time as, or within 30 days after the Insured and before the Company receives due proof of the Insured's death. If no beneficiary survives, payment will be made to the Owner or the Owner's estate or successors.

### Change of Owner and Beneficiary

The Owner may change the designations of Owner and Beneficiary during the Insured's lifetime. Written notice of change must be filed at the Home Office at the address shown on the cover page in a form acceptable to the Company. The new designation will then take effect as of the date the Owner signed the notice. Such a change does not affect any payment made or other action taken by the Company before the notice is received.

### Assignment

The Company is not responsible for the validity or effect of any assignment of this policy. No assignment will bind the company until it is received at the Home Office. Any proceeds payable to the assignee are payable in a single sum, even if a payment option was previously elected for settlement.

### Time Limit on Contests (Incontestability)

The Company cannot contest this policy after it has been in force two years during the Insured's lifetime from the date of issue or the date of any reinstatement, except for nonpayment of premium. If the policy has been reinstated after the policy is in force two years after the date of issue, only statements in the reinstatement application may be contested. If reinstatement occurs within two years of the date of issue the Company may:

1. contest statements on the original application for two years after the date of issue; and
2. contest statements on the reinstatement application for two years after the date of reinstatement.

Any increase in specified amount, which requires evidence of insurability, will be contestable only after such increase has been in force during the Insured's lifetime for two years following the effective date of such increase.

This provision does not apply to any rider which is included with the Policy. The Incontestability section of the rider will apply.

# SPECIMEN

**Suicide**

If the Insured dies by suicide within two years from the Date of Issue, the death proceeds will be an amount equal to:

- the premiums paid; less
- any loan against this Policy; less
- partial surrender amounts and partial surrender charges.

If the Insured dies by suicide:

- within two years from the effective date of an increase in the Specified Amount; but
- more than two years from the Date of Issue;

the death proceeds with respect to the increase will be an amount equal to the Cost of Insurance for the increase. This amount may be reduced if:

- there is a loan against this Policy; or
- there have been partial surrenders of this Policy.

**Misstatement of Age or Sex**

If the Insured's age or sex is misstated, the proceeds payable will be those purchased by the most recent monthly deduction at the correct attained age and sex.

**Payment of Proceeds**

Proceeds means:

- the amount payable on the Insured's death; or
- the amount payable on surrender of this Policy; or
- the amount payable on the Maturity Date.

The proceeds will be paid from the Home Office. This Policy must be returned to the Company. Unless a settlement option is elected, the proceeds will be paid in one sum. Payment will be made immediately upon receipt of due proof of death. The Company will pay interest on the proceeds from the date of death to the date the proceeds are paid. The interest rate will not be less than that required by law at the place of delivery of this contract.

**Nonparticipating**

This Policy does not share in any distribution of surplus. No dividends are payable. The Company will not recoup any prior losses nor distribute past gains by means of changes in cost of insurance or in credited interest rates.

**Annual Report**

An Annual report will be sent to the Owner. It will show since the last report:

- the premiums paid;
- the cost of insurance and the cost of riders;
- interest credited;
- the amount of any partial surrenders;
- the amount of any policy loan, with interest for the current year;
- the Policy Account Value; and
- the Cash Surrender Value.

The report will also include other information as required by state law and regulation.

**Projection of Benefits and Values**

The Owner may request a projection of illustrative future death benefits and Cash Surrender Values. The request must be in writing to the Home Office. A fee may be charged for this service, but it will never exceed \$25.00.

The illustration will be based on:

- assumptions specified by the Owner as to Specified Amount(s), death benefit option(s), and premium payment(s); and
- other necessary assumptions specified by the Company and/or the Owner.

**SPECIMEN**

## Premium Provisions

### General

The first premium is due on the Policy Date. No insurance is effective until the first premium is paid.

All premiums are payable in advance either:

- at our Home Office at the address shown on the cover; or
- to our authorized agent in exchange for a receipt signed by our President or Secretary and countersigned by such agent.

### Flexible Premiums

Premium payments are flexible. The owner may choose the amount and frequency of premium payments. The actual amount and frequency of payment will affect the Policy Account Value and could affect the amount and duration of insurance provided by this policy.

### Planned Premium Payments

The planned premium payment and payment interval are shown on in the Policy Schedule. The owner may change the planned premium payment shown on the premium notices. The notices may be sent at any interval offered by the Company on the date the change is requested.

### Unscheduled Additional Premiums

The owner may pay additional premiums at any time prior to the Maturity Date subject to the Premium Limitation.

### Premium Limitation

Congress has established certain guidelines which determine the qualification of this policy as a life insurance policy. These guidelines establish that the sum of the premiums paid under this policy may not at any time exceed the premium limitation as of such time. Any excess premium paid will be refunded, with interest if appropriate. The premium limitation is the greater of (1) or (2) where:

- (1) is the guideline single premium; and
- (2) is the sum of the guideline level premiums for the number of years this policy has been in force.

The guideline single premium and the guideline level premium are shown in the policy schedule. These guideline premiums will be adjusted if:

1. the specified amount is changed;
2. there is a change to any benefit riders attached to this policy which Congress has defined as qualified benefits; or
3. there is a change in the benefit option.

The premium limitation will not apply if a premium payment is required under the grace period provision to prevent termination of this policy.

### Application of Premiums

The company will apply any amount received under this contract as a premium unless it is clearly marked otherwise.

### Grace Period

This policy provides for a grace period of 61 days to pay sufficient premiums to prevent policy termination. We will send written notice of the required premium due to the owner's last known address and to any assignee of record at least 30 days prior to the date the policy is to terminate. If the premium due is not paid within the grace period, all coverage under this policy will terminate without value at the end of the grace period. If a death claim occurs during the grace period, overdue monthly deductions will be deducted from the proceeds.

The grace period will begin on either:

1. the monthly anniversary where the policy account value is less than the monthly deduction. In this case, the required premium is equal to the monthly deduction minus the policy account value; or
2. the policy anniversary where;
  - (a) the cash surrender value is less than the monthly deduction; and
  - (b) the current policy account value is less than the policy account value as of the prior policy anniversary. At the first policy anniversary, this requirement will be fulfilled if the current policy account value is greater than zero.

In this case, the required premium is equal to the policy account value as of the prior anniversary minus the current policy account value.



**Reinstatement**

This policy may be reinstated, provided:

- the Owner makes his/her request within 5 years of termination;
- it terminated because a grace period ended without sufficient premium being paid;
- satisfactory evidence of insurability is submitted;
- the Owner pays enough premium to keep the policy in force for 2 months; and
- any policy loan is paid or reinstated.

The account value on the effective date of reinstatement will be the account value on the date of entering the grace period plus the premiums paid at reinstatement.

If this policy is reinstated, the surrender charges will be the same as if this policy had been continuously in force from the policy date.

This policy will be approved for reinstatement as of the monthly anniversary on or next following the date we receive satisfactory proof of insurability.

**Insurance Provisions****Death Benefit**

The death benefit depends on the benefit option in effect at the date of death. The death benefit as defined below ensures that this policy qualifies as life insurance under the Internal Revenue Code. The company reserves the right to change the death benefit in order for this policy to comply with any change in federal law.

Option 1. The Specified Amount includes the Policy Account Value. Under this option, the death benefit is the greater of: (a) the Specified Amount and (b) the Policy Account Value at the date of death, times the percentage shown in the Table below for the Insured's attained age.

Option 2. The Specified Amount is in addition to the Policy Account Value. Under this option, the death benefit is the greater of: (a) the Specified Amount plus the Policy Account Value at the date of death and (b) the Policy Account Value at the date of death, times the percentage shown in the Table below for the Insured's attained age.

Insured's Attained Age	Percentage	Insured's Attained Age	Percentage	Insured's Attained Age	Percentage
0-40	250%	55	150%	70	115%
41	243%	56	146%	71	113%
42	236%	57	142%	72	111%
43	229%	58	138%	73	109%
44	222%	59	134%	74	107%
45	215%	60	130%	75-90	105%
46	209%	61	128%	91	104%
47	203%	62	126%	92	103%
48	197%	63	124%	93	102%
49	191%	64	122%	94	101%
50	185%	65	120%	95 or more	100%
51	178%	66	119%		
52	171%	67	118%		
53	164%	68	117%		
54	157%	69	116%		

The option may be changed subject to the Company's approval. The effective date of change will be the monthly anniversary following the date the request is received by us. If the benefit option in effect is option 1, it may be changed to option 2. In this case, the specified amount will be decreased to equal the death benefit less the policy account value.

If the benefit option in effect is option 2, it may be changed to option 1. In this case, the specified amount will be increased to equal the death benefit on the effective date of the change.

The amount of death benefit will be reduced by the amount of any policy loan. There may also be an adjustment in the amount paid due to:

- a successful contest of this policy;
- misstatement of age or sex;
- death by suicide; and/or
- death during the grace period.



**Changes in Specified Amount**

The Owner may request a change in the Specified Amount at any time after the first year. Written request for change must:

- be filed at the Home Office; and
- be in a form acceptable to the Company.

To increase the Specified Amount, the Owner must:

- submit a supplemental application; and
- provide satisfactory evidence of the insurability of the Insured.

The Company reserves the right to limit decreases in Specified Amount during the first five policy years. A decrease is applied:

- first, to reduce the amount provided by the most recent increase;
- next, to reduce the next most recent increases successively;
- finally, to reduce the initial Specified Amount.

After the decrease, the Specified Amount cannot be less than the minimum amount shown in the Policy Schedule. Any increase or decrease in Specified Amount which is approved will become effective as of the next monthly anniversary.

**Maturity Date**

The Maturity Date is shown in the Policy Schedule.

The Maturity Date is the latest date on which the Owner may elect to:

- terminate this policy;
- stop paying premiums; and
- receive any remaining Cash Surrender Value.

It is possible that this policy will end prior to the Maturity Date if:

- premium payments are insufficient;
- changes are made in the Specified Amount or plan as originally issued;
- the current rate of interest applicable on the Date of Issue changes;
- the current cost of insurance rates applicable on the Date of Issue change; or
- a policy loan or partial surrender is made.

**Guaranteed Values****Policy Account Value**

On each monthly anniversary, the policy account value will equal (1) plus (2) plus (3) minus (4) minus (5) where:

- (1) is the policy account value on the preceding monthly anniversary;
- (2) is one month's interest on item (1);
- (3) is any premium received since the preceding monthly anniversary, plus interest from the day that premium is received at our Home Office until the end of the policy month in which that premium was received;
- (4) is the monthly deduction described below for the policy month following the monthly anniversary; and
- (5) is any partial surrender amount, plus any partial surrender charge, made since the preceding monthly anniversary, plus interest from the day that surrender is made until the end of the policy month in which that surrender is made.

On any day other than a monthly anniversary, the policy account value will be calculated on a basis consistent with that prescribed above.

The policy account value on the policy date will be the first premium less the monthly deduction for the month following the policy date.

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**Monthly Deduction**

The monthly deduction for a policy month will equal (1) plus (2) plus (3) where:

- (1) is the cost of insurance described below;
- (2) is the cost for the policy month of additional coverage provided by benefit riders; and
- (3) is the monthly policy fee shown in the Policy Schedule.

**Interest Rate**

The guaranteed minimum interest rate used in the calculation of the policy account value is .32737% a month, compounded monthly. This is equivalent to 4% per year, compounded yearly. Interest in excess of the guaranteed rate may be used in the calculation of the policy account value at such increased rate and in such manner as determined by us. The Company will vary any excess interest crediting rate based on policy account value amounts as shown in the policy schedule. Additional amounts of interest will be non-forfeitable from the effective date of crediting. Any amount which equals policy debt will be credited with interest equal to the policy loan interest rate, less two percent, but in no event less than the minimum rate.

**Cost of Insurance**

The cost of insurance is determined on a monthly basis. The cost is (1) multiplied by the result of (2) minus (3) where:

- (1) is the monthly cost of insurance rate described below;
- (2) is the death benefit at the beginning of the policy month, divided by 1.0032737; and
- (3) is the policy account value at the beginning of the policy month, prior to the deduction of item (1) of the monthly deduction provision for the following month.

If the benefit option is Option 1 and if there has been an increase in the specified amount, then the policy account value will first be considered a part of the specified amount when the policy was issued. If the policy account value is greater than the initial specified amount, it will then be considered a part of each increase in order, starting with the first increase. The benefit options and death benefit are described in the Insurance Provisions.

**Cost of Insurance Rate**

The monthly cost of insurance rate is based on the Insured's attained age, sex, and rating classification. The rating classification is shown in the policy schedule.

The cost of insurance rates are based on the Company's expectations as to future mortality, persistency, expenses and investment earnings. Any change in cost of insurance rates will be based on the Company's expectations in one or more of these factors. The Company's past experience will not be a factor in such change. Any change in cost of insurance rates will apply to all insureds with the same attained age, sex and rating classification. The cost of insurance rates will be reviewed at least once every five years and no more frequently than once a year to determine if a change should be made. Any change in cost of insurance rates will be in accordance with procedures and standards on file with the insurance department of the state in which this policy was delivered.

The cost of the insurance rates for the Insured's rating classification will not be greater than the guaranteed maximum rates shown in the policy schedule. The guaranteed maximum rates are based on the 1980 Commissioners' Standard Ordinary Mortality Table, Male or Female, age nearest birthday. For attained ages below 20, the aggregate basis of this table will be used; otherwise, the smoker and nonsmoker basis will be used, as appropriate.

If there is an increase in specified amount, the rating classification for such increase will be shown in the policy schedule. If the rating classification for the increase is different from previous rating classifications, additional policy schedule pages will be issued with the applicable guaranteed maximum cost of insurance rates for that rating classification.

**Basis of Computations**

Minimum cash surrender values are based on 4% interest per year, compounded yearly, and the 1980 Commissioners' Standard Ordinary Mortality Table, Male or Female, age nearest birthday. For attained ages below 20, the aggregate basis for the table will be used; otherwise, the smoker or nonsmoker basis will be used, as appropriate.

A detailed statement of the method of computation of cash surrender values under this policy has been filed with the insurance department of the state in which this policy was delivered. Cash surrender values under this policy are never less than the minimum values required on the policy date by the state in which this policy was delivered.

SPECIMEN

### Non-Forfeiture Provisions

#### Continuation of Insurance

If premium payments are not made as planned, and no additional unscheduled premium payments are received, this policy may still continue in force. However, this policy will only remain in force until the earliest of:

1. the monthly anniversary where the policy account value is less than the monthly deduction; or
  2. the policy anniversary where:
    - (a) the cash surrender value is less than the monthly deduction; and
    - (b) the current policy account value is less than the policy account value as of the prior policy anniversary.
- At the first policy anniversary, this requirement will be fulfilled if the current policy account value is greater than zero.

If either of these two events occur, the terms of the grace period provision will take effect. If the required premium is not received before the end of the grace period, this policy will terminate as provided in the grace period provision.

#### Paid-Up Insurance Option On Guaranteed Basis

If you wish to discontinue premium payments, but retain some coverage on a permanent basis, the Owner may elect the paid-up insurance option. If the option is elected the Company will apply the Cash Surrender Value to provide a reduced amount of paid-up insurance. The Death Benefit will be the amount that the Cash Surrender Value will purchase, based on the guaranteed interest rate and the guaranteed maximum insurance rates shown in this policy. Once the paid-up insurance option has been elected, there will be no further monthly policy fees assessed against the policy.

#### Surrender

The Owner may surrender this policy and receive the cash surrender value during the Insured's lifetime. Surrender terminates this insurance. Surrender will be effective on the next monthly anniversary of this policy. The Company may postpone payment for as long as six months from the effective date of surrender. If payment is deferred for 10 working days or more, interest at the rate shown under the payment options will be added, unless that interest is less than \$25.00. The Company reserves the right to require the return of the policy.

#### Cash Surrender Value

The cash surrender value will be (1) minus (2) minus (3) where:

- (1) is the policy account value on the date of surrender;
- (2) is any policy indebtedness; and
- (3) is the surrender charge described below.

If the surrender is requested within 30 days after a policy anniversary, the cash surrender value will not be less than the cash surrender value on such anniversary, less any policy loans or partial surrenders made on or after such anniversary.

The surrender value may be paid in cash or under any of the payment options described in this contract.

#### Surrender Charge

The surrender charge for applicable policy years is shown in the policy schedule.

An additional surrender charge may be payable after any increase in the specified amount. If applicable, the additional charge will be added to any remaining surrender charge to determine the total surrender charge. The Company will send you a new policy schedule showing the total surrender charge for applicable policy years after an increase in specified amount.

#### Partial Surrender

A partial surrender of this policy may be made during the Insured's lifetime and prior to the maturity date. The partial surrender will be effective on the next monthly anniversary of this policy. The owner must send us a written request for a partial surrender. The minimum amount which will be paid as a partial surrender is \$500. In addition, the amount paid may not exceed the cash surrender value on the date of partial surrender less \$275. The Company reserves the right to limit the number of partial surrenders to six within a policy year.

When a partial surrender is made, the policy account value will be reduced by the amount of the partial surrender. The specified amount for benefit option 1 will be reduced by the same amount. The specified amount remaining in force after a partial surrender will be subject to the minimum amount set forth in the Policy Schedule.

**SPECIMEN**

The Company may postpone payment of a partial surrender for as long as six months from the effective date of the partial surrender. If payment is deferred for 10 working days or more, interest at the rate shown under the payment options will be added unless that interest is less than \$25.00. A partial surrender used to pay a premium on any policy issued by us will not be postponed.

#### **Partial Surrender Charge**

Upon a partial surrender of the policy, the policy account value will be reduced by a partial surrender charge. The specified amount for benefit option 1 will be reduced by the same amount. The amount of the partial surrender charge will be equal to (1) plus (2), where:

- (1) is the administration fee shown in the policy schedule.
- (2) is the full surrender charge multiplied by the ratio of the partial surrender amount to the cash surrender value of the policy.

Future surrender charges will be reduced by the ratio described in (2) above.

#### **Policy Loans**

While the policy is in force, the owner may obtain all or part of the available loan value by written notice. This policy, assigned to us, is the only security needed. The Company may postpone making a loan for as long as six months from the date the notice is received at our Home Office. If payment is deferred for 10 working days or more, interest at the rate shown under the payment options will be added, unless that interest is less than \$25.00. A policy loan used to pay a premium on any policy issued by us will not be postponed.

#### **Loan Value**

The loan value will be (1) minus (2) where:

- (1) is the policy account value of this policy; and
- (2) is the surrender charge as described in the non-forfeiture provisions.

#### **Available Loan Value**

The available loan value will be the loan value less the sum of:

- (1) any existing policy loan;
- (2) loan interest in advance to the next policy anniversary; and
- (3) any due and unpaid monthly deductions payable prior to the date of the next planned premium payment, based upon the frequency of premium notices that are sent to the owner. Monthly deductions for future policy months will be based upon guaranteed cost of insurance rates and monthly policy fees.

#### **Interest on Policy Loans**

Interest on policy loans will be payable in advance from the date of the loan to the next policy anniversary at the annual interest rate of 7.4%. Interest is payable in advance at the beginning of each subsequent policy year. If interest is not paid when due, it will be added to the policy loan and bear interest at the same rate.

#### **Repayment of Policy Loans**

A policy loan may be repaid in full or in part in minimum amounts of \$50.00 at any time while the policy is in force. Failure to pay back the policy loan may cause this policy to terminate. This will occur if the policy indebtedness decreases the cash surrender value to the point that condition 2 of the grace period provision applies; in this event, the policy will terminate unless part of the loan is repaid or the premium required by condition 2 is paid.

**SPECIMEN**

### Options For Payment of Proceeds

The proceeds of this contract will be paid in a single sum if no other form of payment is elected. All or part of this sum may be applied under any of the payment options described or in any other manner approved by the Company. These optional forms of settlement are available for payment in the event of the Insured's death or of cash surrender.

The Owner may elect any payment option for payment of death proceeds while the Insured is alive. If no payment option has been chosen when the proceeds become payable, the beneficiary may elect an option within certain time limits. For death proceeds, the election must be made within one year after the Insured dies. For other proceeds, the election must be made within 60 days after the proceeds become payable. The election must be made in writing in a form which clearly identifies the settlement desired.

A payment option can be elected only if the amount to be applied for any one Payee is at least \$2,000. The amount for each Payee must also be large enough to provide a periodic payment of at least \$25.00.

Under Option 1, the first payment is due one payment period from the date the option goes into effect. Under the other options, the first payment is due on the date the option goes into effect.

The yearly interest rate for money left under any Payment Option will be at least 5 1/2%. The Company may elect to credit interest at a higher rate. Money held by the Company under the Payment Options is held with the general assets, and not in a separate fund.

### Options Available

**Option 1: Proceeds Left at Interest** - Under this option, the company will hold the proceeds. Interest will be paid either once a month, four times a year, twice a year, or once a year. Proceeds will not be held under this option for more than 30 years.

**Option 2: Payments of a Fixed Amount** - Under this option, the company will make payments in the amount chosen until the proceeds and earned interest have been paid out in full.

The total amount paid each year must be at least 5% of the original proceeds. The length of the payment period will depend on the amount chosen, the amount of the proceeds applied and the amount of interest earned.

**Option 3: Payments For a Fixed Period** - Under this option, the Company will make monthly payments for the number of years chosen. Table A shows the monthly payment for each \$1,000 of proceeds for payment periods of 1 to 30 years. The payment amounts shown include guaranteed interest.

**Option 4: Life Income** - Under this option, the Company will make monthly payments for the life of the Payee. We have the right to require satisfactory proof that the Payee is alive. If a guaranteed payment period is elected, the Company will make payments for at least the period elected, whether or not the named Payee is living.

When this option is elected, the amount of each installment will be based on the Payee's age and sex at the birthday nearest the date the option goes into effect. We have the right to require satisfactory proof of the Payee's age. Table B shows the monthly amounts payable at various ages for life with no guarantee, and for 10-year and 20-year guaranteed periods. Where the monthly installments for 2 or more periods are the same, payments will continue for the longer period.

Option 4 is available only if the Payee is a natural person who is the Insured, Owner, or Beneficiary. This option is not available to a Payee who is an assignee, estate, fiduciary, partnership or corporation.

### Death of Payee Under Payment Options

Unless the Owner or the Beneficiary has made other provisions in electing a payment option, amounts remaining at the Payee's death will be paid to the Payee's estate.

Under Option 1, the proceeds on deposit will be paid in a single sum.

Under Option 2, any unpaid proceeds and earned interest will be paid in a single sum.

Under Options 3 and 4, the present value of any unpaid guaranteed payments will be paid in a single sum. The sum to be paid will equal the total of guaranteed payments remaining, discounted at 5 1/2% yearly compound interest.



## Tables For Payment Options

Table A, Option 3 — Monthly Payments For Each \$1,000 of Proceeds\*

Number of Years	Monthly Payments	Number of Years	Monthly Payments	Number of Years	Monthly Payments
1	\$85.39	11	\$10.00	21	\$6.59
2	43.84	12	9.39	22	6.43
3	30.00	13	8.88	23	6.29
4	23.09	14	8.44	24	6.15
5	18.95	15	8.06	25	6.03
6	16.20	16	7.74	26	5.92
7	14.24	17	7.45	27	5.82
8	12.78	18	7.20	28	5.73
9	11.64	19	6.97	29	5.65
10	10.74	20	6.77	30	5.57

\*The final payment will be increased by any remaining unpaid balance.

## Table B, Option 4

Monthly Payments For Each \$1,000 of Proceeds

Nearest Age of Payee		Monthly Payments Guaranteed for			Nearest Age of Payee		Monthly Payments Guaranteed for		
Male	Female	Life	10 Yrs. Certain and Life	20 Yrs. Certain and Life	Male	Female	Life	10 Yrs. Certain and Life	20 Yrs. Certain and Life
10 & Under	15 & Under	\$4.65	\$4.64	\$4.64	45	50	\$ 5.65	\$5.59	\$5.44
11	16	4.66	4.65	4.64	46	51	5.72	5.65	5.48
12	17	4.67	4.66	4.65	47	52	5.79	5.72	5.53
13	18	4.68	4.67	4.66	48	53	5.86	5.78	5.57
14	19	4.69	4.68	4.67	49	54	5.94	5.85	5.62
15	20	4.70	4.69	4.69	50	55	6.02	5.92	5.67
16	21	4.71	4.71	4.70	51	56	6.11	5.99	5.72
17	22	4.72	4.72	4.71	52	57	6.20	6.07	5.77
18	23	4.74	4.73	4.72	53	58	6.29	6.15	5.82
19	24	4.75	4.75	4.74	54	59	6.39	6.23	5.87
20	25	4.77	4.76	4.75	55	60	6.49	6.32	5.92
21	26	4.78	4.78	4.77	56	61	6.60	6.41	5.97
22	27	4.80	4.80	4.78	57	62	6.72	6.51	6.03
23	28	4.82	4.81	4.80	58	63	6.84	6.61	6.08
24	29	4.84	4.83	4.82	59	64	6.97	6.71	6.13
25	30	4.86	4.85	4.83	60	65	7.11	6.82	6.19
26	31	4.88	4.87	4.85	61	66	7.26	6.94	6.24
27	32	4.90	4.90	4.87	62	67	7.42	7.06	6.29
28	33	4.93	4.92	4.90	63	68	7.59	7.18	6.34
29	34	4.95	4.94	4.92	64	69	7.77	7.32	6.39
30	35	4.98	4.97	4.94	65	70	7.97	7.45	6.44
31	36	5.01	5.00	4.97	66	71	8.18	7.60	6.48
32	37	5.04	5.03	4.99	67	72	8.40	7.75	6.52
33	38	5.07	5.06	5.02	68	73	8.65	7.90	6.56
34	39	5.11	5.09	5.05	69	74	8.91	8.06	6.60
35	40	5.14	5.13	5.08	70	75	9.19	8.23	6.63
36	41	5.18	5.16	5.11	71	76	9.50	8.39	6.66
37	42	5.22	5.20	5.14	72	77	9.83	8.56	6.69
38	43	5.26	5.24	5.17	73	78	10.18	8.73	6.71
39	44	5.31	5.29	5.21	74	79	10.57	8.90	6.72
40	45	5.36	5.33	5.24	75	80	10.98	9.08	6.74
41	46	5.41	5.38	5.28	76	81	11.43	9.25	6.75
42	47	5.46	5.43	5.32	77	82	11.92	9.41	6.76
43	48	5.52	5.48	5.36	78	83	12.45	9.57	6.76
44	49	5.58	5.54	5.40	79	84	13.02	9.73	6.77
					80	85	13.64	9.88	6.77
					& Over	& Over			

**WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK**  
100 QUENTIN ROOSEVELT BLVD • PO BOX 518 • GARDEN CITY NY 11530

**AMENDMENT OF APPLICATION**

I, Jon Fieldman, hereby amend my application to  
WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK under date of Aug. 23, 1995  
as follows: Part I Question 5 Owner shall read: Insured

I agree that these changes shall be an amendment to and form a part of the original application and of the policy issued as a result, if any; I also agree that they shall be binding on any person who shall have or claim any interest under the policy.

I have signed the copy of this amendment form which remains attached to the Policy as well as the copy for the Home Office.

Date 11/9/95

Proposed  
Insured

Policy No. 070-14261

Applicant-  
Owner

(If Applicant is a Firm or Corp., insert name of Company)

I have witnessed the signature(s) on the copy of this amendment form which remains attached to the Policy, as well as on the copy for the Home Office.

By

(Signature & Title of Officer Authorized to Sign for Firm or Corp.)

Witness [Signature]

By

(Additional Signature)

AP-LA/82

2042

PLEASE DETACH AT PERFORATION AND RETURN THIS COPY TO THE HOME OFFICE

**SPECIMEN**

## William Penn Life Insurance Company of New York

Policy Number

## PART I

1. a. Proposed Insured's Name:

First Jon Middle Fieldman Last

Maiden and/or Prior Name

b. ☒ Male ☐ Femalec. ☐ Single ☒ Married ☐ Divorced ☐ Widowed ☐ Separatedd. Date of Birth 9 / 29 / 48 e. Age \_\_\_\_\_  
Mo. Day Yr. (nearest birthday)f. Place of Birth NY USA  
State Countryg. Social Security or Tax I.D. No. 127-36 8789

h. Driver's License No. \_\_\_\_\_

2. b. Are you a citizen of the U.S.? ☒ Yes ☐ No

If No, state country and type of visa \_\_\_\_\_

3. Send all mail to Owner at address in ☐ 4a ☐ 4b ☐ 5

4. a. Residence Address:

No. & Street 2 Country Club DRCity/State/Zip White Plains NY 10607Telephone Number (914) 592 8250Questions 4b & c apply to proposed insured if age 15 or over;  
to owner or payor if proposed insured under age 15.

b. Business Address:

Name of Employer Viss Cueso's IncNo. & Street 210 W 44th STCity/State/Zip NY NYTelephone Number (212) 398-0360Number of years employed 10 yrsc. Occupation(s) OWNER

Duties (describe) \_\_\_\_\_

5. Owner (if other than proposed insured)

a. Name John Viscusob. Relationship to proposed insured Business Partnerc. Address: ☐ Residence ☒ BusinessNo. & Street (Viss Cueso's Inc) 210 W 44th STCity/State/Zip New York NYTelephone No. (212) 398-0360

d. Social Security or Tax I.D. No. \_\_\_\_\_

6. Send Premium Notices to:

☐ Proposed Insured ☒ Owner ☐ Other

(Give name, address and telephone number if Other)

Name See # 5

No. &amp; Street \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_

7. a. Plan PENN OPTION FLEX

b. If Last Survivor plan, indicate joint equal age: \_\_\_\_\_

c. Amount \$ 350,000d. Premiums Payable ☒ Annual ☐ Semi-annual☐ Pre-Authorized Check ☐ Quarterly ☐ Other \_\_\_\_\_e. List Bill ☐ Yes ☐ No

Special Billing Number if previously assigned \_\_\_\_\_

f. Automatic Premium Loan, if available ☐ Yes ☐ No

g. Other Riders/Benefits:

☐ Primary Insured Rider \$ \_\_\_\_\_☐ Waiver of Monthly Deduction Rider (UL)☐ Spouse Rider (UL) \$ \_\_\_\_\_☐ Other Insured Rider \$ \_\_\_\_\_

\$ \_\_\_\_\_ \$ \_\_\_\_\_

\$ \_\_\_\_\_ \$ \_\_\_\_\_

☐ Children's Insurance Rider--Units/Face: \_\_\_\_\_☐ Family Insurance Rider -- Units: \_\_\_\_\_☐ Accidental Death Benefit \$ \_\_\_\_\_☐ Cost of Living Rider☐ Waiver of Premium Benefit Rider☐ Annual Renewable & Convertible Term Rider (for

Universal Life only) \$ \_\_\_\_\_

☐ Annual Renewable Term (ART) Rider to Age 70/90☐ Guaranteed Re-Entry Option (GRO) Rider☐ Other \_\_\_\_\_☐ Other \_\_\_\_\_8. ☐ Alternate Policy ☐ Additional Policy

Plan \_\_\_\_\_ Amount \$ \_\_\_\_\_

☐ Additional Benefits: ☐ W.P. ☐ ADB ☐ Other: \_\_\_\_\_

9. Complete for Universal Life only:

a. Proceeds Option:

☒ Option 1: The Specified Amount includes the Policy Account Value☐ Option 2: The Specified Amount is in addition to the Policy Account Value.

b. Billing Instructions:

Total First Year Annual Premium Planned \$ 4886.00

Remainder of First Year Premium to be billed as follows:

Planned Future Premiums for Second Year and thereafter:

☒ Annual \$ 4886.00 ☐ Semi-Annual \$ \_\_\_\_\_ (x2)☐ Quarterly \$ \_\_\_\_\_ (x4) ☐ Other (See Item c) \_\_\_\_\_

c. Special Planned Premium Arrangements (Attach Illustration):

If you wish the policy summary to reflect planned future premiums which vary over the duration of the policy, please indicate here (Example: \$1,000 per year for the first 5 years; \$2,000 per year for the next 10 years, etc.). \_\_\_\_\_

10. Amount paid with this application: \$ \_\_\_\_\_

Please read Conditional Receipt. ☒ NONE

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## PART I (continued)

## 11. Other Proposed Insured(s):

Name	Sex	Relationship to Proposed Insured	Date of Birth (Mo-Day-Yr)	State/Country of Birth	Driver's License #	Social Security or Tax I.D.#

12. For other proposed insured(s) age 18 or older listed in #11 above provide: Name, address and telephone number of employer, occupation & duties, years employed there and current annual income.

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## 13. Life insurance in force on all persons proposed for insurance.

Name of Proposed Insured	Company	Issue Year	Face Amount	ADB	Purpose (pers/bus.)
NONE					

For any Yes answer to Questions 14 a - i, give full details in Remarks section and complete any special form(s) required.

## 14. HAS ANY PERSON PROPOSED FOR INSURANCE:

- a. smoked cigarettes or used tobacco in any other form in the past twelve (12) months?
- b. engaged or intend to engage in hang gliding, racing, mountain climbing, skin, scuba or sky diving? (If Yes, complete Hazardous Activities Questionnaire.)
- c. had driver's license restricted, revoked or suspended?
- d. been convicted of a felony or misdemeanor within the past 10 years?
- e. other life or health insurance applications pending?
- f. ever had life or health insurance declined, modified or rated?
- g. any intention of traveling or residing outside the country?
- h. any intention of replacing or changing any life insurance or annuity policy in force in this or any other company?
- i. taken within five years or intend to take flights other than as a fare-paying passenger on a regularly scheduled airline? (If Yes, complete Aviation Questionnaire.)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

## 15. Complete for Indeterminate Premium Life Policy Only:

I understand that: (a) the premium for the policy applied for may change after the initial guarantee period; (b) the premium then charged is not guaranteed; and (c) the Company may charge the full maximum guaranteed premium.

☒ Yes ☐ No

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## PART I (continued)

## IN CONNECTION WITH THIS APPLICATION FOR INSURANCE, IT IS UNDERSTOOD AND AGREED THAT:

The statements contained here and in Part II of this application and any supplements thereto, copies of which shall be attached to and made a part of any policy to be issued, are true to the best of my (our) knowledge and belief and are made to induce the Company to issue an insurance policy.

No agent or other person has power to make, modify, or discharge any contract of insurance or to bind the Company by making promises respecting benefits upon any policy to be issued. No information as to any matter made a subject of inquiry here and in Part II of this application and any supplements thereto, copies of which shall be attached to and made part of any policy to be issued, shall be considered known by the Company unless set out in writing on this application.

Except as may be provided in a duly issued Conditional Receipt bearing the same number as this application, no insurance shall take effect unless and until the policy has been physically delivered and the first full premium paid during the lifetime of the insured(s) and then only if the person(s) to be insured is (are) actually in the state of health and insurability represented in Parts I and II of this application and any supplements thereto, copies of which shall be attached to and made part of any policy to be issued.

Changes or corrections made by the Company and noted in Part I, Question 19 above are ratified by the Owner upon acceptance of a contract containing this application with the noted changes or corrections. In those states where written consent is required by statute or State Insurance Department regulation for amendments as to plan, amount, classification, age at issue, or benefits, such changes will be made only with the Owner's written consent.

## DECLARATION

I (We) have carefully read the receipt and understand and agree to the terms thereof including the conditions under which a limited amount of insurance may become effective prior to policy delivery. I (We) understand that all premium checks are to be made payable to William Penn Life Insurance Company of New York; checks are not to be made payable to the agent or the payee left blank. I (We) have received the MIB Disclosure and Fair Credit Reporting Act/Abbreviated Notice of Insurance Practices.

City New York State of N.Y.

Date 7/31/95

Signature of Witness (Licensed Resident Agent where required by statute or regulation)

Signature of Proposed Insured, or parent or legal guardian if Proposed Insured is a minor

Signature of Spouse or Other Proposed Insured

Agent Name (if required)-Please Print State/Lic.# (if required)

Signature of Other Proposed Insured

X Signature of Owner, if other than Proposed Insured

Signature of Other Proposed Insured

**AUTHORIZATION.** A photocopy of this authorization shall be as valid as the original, which shall be valid for 30 months from the date below. I (We) hereby authorize any physician, medical practitioner, hospital, clinic or medical or medically related facility, insurance company, employer, consumer reporting agency, the Medical Information Bureau or any other organization, institution or person having any information (including diagnosis, treatment or prognosis) about my (our) physical or mental condition or any other information about me (us) or my (our) health, to give to William Penn Life Insurance Company of New York, its authorized representatives or its reinsurers any such information. This includes data related to drugs or alcoholism. It also includes data obtained in connection with the preparation of any investigative consumer report as defined under the Fair Credit Reporting Act(s) and referred to elsewhere in this application. To expedite the collection of data, I (we) authorize all such sources, except the Medical Information Bureau, to give the data to any agency employed by William Penn Life Insurance to collect and transmit such data. I (We) further authorize William Penn Life Insurance to prepare or obtain an investigative consumer report in connection with this application. If an investigative consumer report is prepared, I (we) elect to be interviewed: ☐ Yes ☐ No.

I (We) am (are) aware that I (we) am (are) entitled to receive a copy of this authorization form,

No. **11188**

Date 7/31/95

Signature of Proposed Insured, or parent or legal guardian if Proposed Insured is a minor

Signature of Other Proposed Insured

Signature of Other Proposed Insured

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## William Penn Life Insurance Company of New York

## PERSONAL INFORMATION STATEMENT

COMPLETE ON ALL BUSINESS CASES AND IF REQUIRED ON NON-BUSINESS CASES  
(REFER TO CURRENT UNDERWRITING REQUIREMENTS CHART)

## 1. a. Personal Finances for each person proposed for insurance:

Name of Proposed Insured	Total Assets	Total Liabilities	Net Worth	Earned Income	Unearned Income
JOHN FIELDMAN	750,000 +	—	750,000 +	50,000 +	—

- b. Has any person proposed for insurance ever filed for bankruptcy?  
If "Yes," provide details below.

☐ Yes ☒ No

2. What is the purpose of this insurance? (i.e., Keyman, Stock Redemption, Buy and Sell, Creditor, Estate Liquidity, Other):

Buy/Sell

3. How was the face amount determined? Stock holders + acct.

## 4. Business Finances (Complete only if this is business insurance):

- a. Total Assets \$ 1,000,000 + b. Total Liabilities \$ — c. Net Worth \$ 1,000,000  
d. Net Profit After Taxes for Past Two Years: Last Year \$ — Previous Year \$ —  
e. Is the business a Corporation Partnership, or Proprietorship? (circle one) S Corp -  
f. How long has the business been established? 10 YRS  
g. What is the nature of the business? Restaurant  
h. What is the percentage ownership of this firm? 50  
i. Is there business insurance applied for or in force on other key members of this firm? ☒ Yes ☐ No  
If "Yes," provide details below.  
j. Has the proposed insured's company ever filed for bankruptcy? ☐ Yes ☒ No  
If "Yes," provide details below.

## 5. Are there any special considerations or circumstances relevant to this case?

6. Details: NO PROFIT DUE TO S Corp STATUS - all income passes thru.

The statements contained in this PERSONAL INFORMATION STATEMENT, a copy of which shall be attached to and made part of any policy to be issued, are true to the best of my knowledge and belief and are made to induce the company to issue an insurance policy.

[Signature]  
Signature of Witness

7/31/95  
Date

[Signature]  
Signature of Proposed Insured

Signature of Other Proposed Insured

Signature of Other Proposed Insured

Signature of Other Proposed Insured

**SPECIMEN**

PART II OF APPLICATION TO WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
EXAMINATION TO BE MADE IN PRIVATE. PLEASE READ ALL QUESTIONS TO APPLICANT.  
ANSWERS TO BE RECORDED BY THE MEDICAL EXAMINER IN HIS OWN HANDWRITING.

1. PROPOSED INSURED'S NAME <b>ION M. Feldman</b>	A. DATE OF BIRTH month <b>09</b> day <b>24</b> year <b>1948</b>	B. HEIGHT <b>5'10</b>	C. WEIGHT <b>180</b>	D. Change in weight in past 12 months (Give reason) lbs. Loss <b>0</b> Gain <b>0</b>
E. Name of Personal Physician <b>DR. Gennaro Accurcio</b>	Physician's Address <b>112 LEXINGTON AVE NYC NY 10016</b>	Physician's Phone No. <b>(212) 696-2680</b>		
Date and reason last consulted - if none, so state <b>7/05 - Check-up - LAB, EKG (WNL)</b>				

Give full details if answer to Questions 2 through 11 is Yes.  
Details, Dates, Doctors' Names & Addresses

2. Do you have any physical defect?	YES NO	
3. Have you ever applied for or received disability benefits from any source?	YES NO	<b>(4A) 10 cigarettes per DAY (20YRS) E654ST</b>
4. HAVE YOU: a. smoked cigarettes in the past 12 months? b. used tobacco in any other form in the past 12 months?	YES NO	<b>(7F) 1985 DR. P.H.S. NYC NY PASSED Kidney STONE Hosp. in Connecticut Does NOT RECALL NAME 1992 - PASSED Kidney STONE - AT HOME - DR. P.H.S. (See Above)</b>
5. HAVE YOU: a. used barbiturates, heroin, cocaine, marijuana, or any other illegal, restricted, or controlled substance except as prescribed by a physician? If Yes, when, how often? b. been advised to seek, or received treatment for drug use, or been arrested for drug use or distribution?	YES NO	<b>(7L) DR. Schwartz NYC NY SS E654ST Physical Exam - 1993 LAB, Chest X-RAY EKG (WNL)</b>
6. HAVE YOU: a. ever used alcoholic beverages? If Yes, how often and how many ounces? b. been advised to limit or cease the use of alcoholic beverages?	YES NO	
c. been counseled, sought help or treatment, or been advised to undergo counseling or treatment for alcohol problems?	YES NO	
d. attended or joined any organization for alcohol or related problems?	YES NO	
7. HAVE YOU EVER HAD: a. convulsions, paralysis, neuritis, nervous breakdown, dizziness, fainting spells, migraine headaches, nervous or mental disorders? b. high blood pressure, chest pain, palpitation, heart attack, disorder of heart or blood vessels? c. hemorrhage, asthma, tuberculosis, emphysema, disorder of respiratory system? d. shortness of breath, chronic hoarseness or cough, blood spitting? (past 10 years) e. chronic indigestion, ulcer, hernia, colitis, intestinal bleeding, disorder of stomach, gall bladder, liver, digestive or abdominal organs? f. kidney stone, diabetes, sugar, albumin, pus, or blood in urine, disorder of kidneys, bladder, genito-urinary organs? g. rheumatic fever, arthritis, gout, disorder of muscles, bones, joints or spine? h. impairment of vision or hearing or disease of eyes, ears, nose or throat? i. tumor, cancer, venereal disease, disorder of blood, skin, thyroid or other glands? j. treatment or observation in any hospital or institution? (past 5 years) k. x-rays, electrocardiograms, blood studies or other diagnostic tests other than an HIV or HTLV-III test (past 5 years). Give details. l. treatment or consultation with any physicians or practitioners, other than as stated above (past 5 years). Give details.	YES NO	
8. Have you been diagnosed by or received treatment from a member of the medical profession for Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)?	YES NO	
9. Have you in the past 5 years been advised to have or do you contemplate a surgical operation?	YES NO	
10. Are you now pregnant? (If so, how many months)	YES NO	
11. Provide family history	Age, If Living	Age at Death
Mother	<b>83</b>	<b>83</b>
Father		<b>NATURAL</b>
Brothers and Sisters	<b>49</b>	

The statements and answers are true to the best of my knowledge and belief and are made for the purpose of inducing the company to issue Insurance on my life.

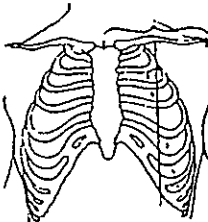
**AUTHORIZATION** - A photo copy of this authorization shall be as valid as the original, which shall be valid for 30 months. I hereby authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organization, institution or person, that has any records or knowledge of me or my health, to give William Penn Life Insurance Company of New York or its reinsurers any such information. This includes data related to drugs, alcoholism or mental illness. To expedite the collection of data, I authorize all such sources, except the Medical Information Bureau, to give the data to any agency employed by William Penn Life Insurance to collect and transmit such data. I am aware that I am entitled to receive a copy of this authorization form.

Signed at **NYC** City **NY** State Proposed Insured **ION M. Feldman**  
Date **8-28-96** Witness **Carole Zampella** Examiner **2540**  
MP-1000/88 NY

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## PART III MEDICAL EXAMINER'S REPORT

WHERE INDICATED, GIVE FULL DETAILS UNDER NUMBER 9 OR IN A SEPARATE LETTER TO THE MEDICAL DIRECTOR.

1. How long have you known applicant? <u>0</u> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		PLEASE CHECK (✓) APPROPRIATE COLUMN		YES NO
2. Is general appearance as to health and habits good? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		5. Do you find any evidence of past or present disease of:		
(If "No" give details under No. 9)		a. Brain or nervous system? (Test palellar and pupillary reflexes and observe gait.)		<input type="checkbox"/> <input type="checkbox"/>
3. a. Height in shoes <u>5</u> ft. <u>10</u> in. Weight (clothed) <u>180</u> lbs.		b. Lungs or respiratory organs?		<input type="checkbox"/> <input type="checkbox"/>
Did you measure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		c. Abdomen? (Describe scars, tenderness or masses. If a hernia is present, give size and reducibility.)		<input type="checkbox"/> <input type="checkbox"/>
Did you weigh? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		d. Genito urinary system? (Examine prostate if indicated by history.)		<input type="checkbox"/> <input type="checkbox"/>
b. Any change in weight in past year? Gain <u>0</u> lbs. Loss <u>0</u> lbs.		e. Eyes, ears, nose or throat?		<input type="checkbox"/> <input type="checkbox"/>
c. Reason for any change?		f. Bones, lymph glands, thyroid or skin?		<input type="checkbox"/> <input type="checkbox"/>
Present weight maintained how long? <u>5</u> yrs		g. Any other part of the body?		<input type="checkbox"/> <input type="checkbox"/>
d. Chest: Inspiration <u>10 1/2</u> ins. Expiration <u>8 1/2</u> ins. Abdomen <u>35</u> ins.		8. a. Any varicosities, edema, amputation or deformity?		<input type="checkbox"/> <input type="checkbox"/>
4. Cardiovascular Examination:		b. Artificial limb, brace or crutch used?		<input checked="" type="checkbox"/> <input type="checkbox"/>
a. Blood Pressure: Systolic <u>120</u> Diastolic <u>88</u>		7. Amount of Insurance applied for: \$ <u>350,000</u>		
If pressure is above 140 systolic or 90 diastolic, take two additional readings at least five minutes apart.		8. Urinalysis - Repeat if Specific Gravity is below 1.012. SEND A SPECIMEN TO THE HOME OFFICE IF:		
Before Exercise Immediately After 3 Minutes After		a. Amount in Question 7 above is:		
b. Pulse Rate		100,000 and Over - Ages 0 - 50		
Irregularities		Any Amount - Over Age 60		
c. Any dyspnea, pain or discomfort after exercise? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		b. History of urinary disease or abnormal findings:		<input checked="" type="checkbox"/> <input type="checkbox"/>
d. Any sclerosis of peripheral vessels, clubbing, or cyanosis? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		c. History or finding of hypertension:		<input checked="" type="checkbox"/> <input type="checkbox"/>
e. Is the heart enlarged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Specific Gravity _____ Albumin _____		<input checked="" type="checkbox"/> <input type="checkbox"/>
(Locate apex by [X] on diagram.)		Sugar _____		<input checked="" type="checkbox"/> <input type="checkbox"/>
f. Is there a murmur? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Are you sending a specimen to the Home Office?		<input checked="" type="checkbox"/> <input type="checkbox"/>
(Examine heart in erect and recumbent positions.)		9. DETAILS AND ADDITIONAL REMARKS:		
TIMING: Systolic <input type="checkbox"/> Pre-systolic <input type="checkbox"/> Diastolic <input type="checkbox"/>				
INTENSITY: Faint <input type="checkbox"/> Moderate <input type="checkbox"/> Loud <input type="checkbox"/>				
GRADING: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6				
PLEASE COMMENT on the presence or absence of thrills, or any undue accentuation of heart sounds, and on the effects of exercise, change of position, or phase of respiration.				
ON DIAGRAM, LOCATE: Apex by X Area of murmur by ○				
Point of maximum intensity by ○ Transmission by →				
				
g. Based on the history and findings, what is your impression of the cardiac status?				

TO THE MEDICAL EXAMINER: Any erasures or alterations in this report should be initiated by you. Send this report, or any information which you prefer not to embody in this report, direct to the Medical Department of the Company.

IMPORTANT: If the Examiner has any information which may adversely affect the risk, please indicate such information under Item 9.

→ Mail when completed to: Medical Director - William Penn Life Insurance Company of New York  
100 Quentin Roosevelt Blvd • PO Box 519 • Garden City NY 11530

SPECIMEN

Flexible Premium Adjustable Life Insurance Policy  
Adjustable Death Benefit Payable Prior to the Maturity Date  
Flexible Premiums Payable During Insured's Lifetime to Maturity Date  
Non-Participating - No Dividends

SPECIMEN



WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
STATEMENT OF POLICY COST AND BENEFIT INFORMATION

STANDARD SUMMARY PENN OPTION FLEX

POLICY #:0700014261

AGE 47 M SMOKER

TABLE STANDARD

POLICY DATE:10/03/1995

ADJUSTABLE LIFE INSURANCE POLICY WITH LEVEL DEATH BENEFIT OPTION

INITIAL ANNUAL PREMIUM: 4886

INITIAL SPECIFIED AMOUNT: 350000

MATURITY DATE:10/03/2043

OTHER COVERAGES: NONE

POLICY YEAR	ANNUAL PREMIUM	BASED ON CURRENT FACTORS			BASED ON GUARANTEED FACTORS		
		POLICY ACCOUNT VALUE	CASH SURRENDER VALUE	DEATH BENEFIT	POLICY ACCOUNT VALUE	CASH SURRENDER VALUE	DEATH BENEFIT
01	4886	2778	0	350000	2458	0	350000
02	4886	5573	0	350000	4720	0	350000
03	4886	8376	0	350000	6838	0	350000
04	4886	11354	8	350000	8794	0	350000
05	4886	14475	4160	350000	10540	225	350000
06	4886	17754	8471	350000	12034	2751	350000
07	4886	21257	13005	350000	13218	4966	350000
08	4886	24962	17742	350000	14027	6807	350000
09	4886	28909	22720	350000	14416	8227	350000
10	4886	33139	27982	350000	14323	9166	350000
11	4886	37574	33448	350000	13703	9577	350000
12	4886	42199	39105	350000	12485	9391	350000
13	4886	47146	45083	350000	10607	8544	350000
14	4886	52394	51363	350000	7957	6926	350000
15	4886	57968	57968	350000	4389	4389	350000
16	4886	63768	63768	350000	0	0	0
17	4886	69725	69725	350000	0	0	0
18	4886	75834	75834	350000	0	0	0
19	4886	82092	82092	350000	0	0	0
20	4886	88517	88517	350000	0	0	0

AGE 60	4886	52394	51363	350000	7957	6926	350000
AGE 65	4886	82092	82092	350000	0	0	0
AGE 70	4886	116227	116227	350000	0	0	0

SPECIMEN



WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
STATEMENT OF POLICY COST AND BENEFIT INFORMATION

STANDARD SUMMARY PENN OPTION FLEX

POLICY #:0700014261

AGE 47 M SMOKER

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POLICY DATE:10/03/1995

ADJUSTABLE LIFE INSURANCE POLICY WITH LEVEL DEATH BENEFIT OPTION

INITIAL ANNUAL PREMIUM: 4886

INITIAL SPECIFIED AMOUNT: 350000

MATURITY DATE:10/03/2043

OTHER COVERAGES: NONE

GUARANTEED VALUES ARE BASED UPON GUARANTEED COST OF INSURANCE AND EXPENSE CHARGES AND 4% INTEREST. CURRENT VALUES ARE BASED UPON THE CURRENT COST OF INSURANCE AND EXPENSE CHARGES AND THE CURRENT INTEREST RATE, WHICH VARIES BY POLICY ACCOUNT VALUES AS FOLLOWS:

POLICY ACCOUNT VALUE	CURRENT INTEREST RATE
0 - 9,999	6.50%
10,000 - 19,999	7.00%
20,000 AND OVER	7.25%

THE CURRENT INTEREST RATES ARE GUARANTEED NOT TO CHANGE DURING THE FIRST POLICY YEAR.

THE PORTION OF POLICY ACCOUNT VALUE WHICH EQUALS THE AMOUNT OF ANY UNPAID LOAN IS CREDITED WITH 6% INTEREST. ALL INTEREST RATES SHOWN ARE EFFECTIVE ANNUAL RATES. INTEREST IS CREDITED MONTHLY AFTER DEDUCTION OF EXPENSE AND COST OF INSURANCE CHARGES.

PREMIUMS ARE FLEXIBLE. PREMIUMS ILLUSTRATED ARE BASED ON INTENDED PREMIUMS AND, IF PAID OTHER THAN ANNUALLY, POLICY ACCOUNT VALUES AND CASH SURRENDER VALUES WILL BE LESS THAN IF PREMIUMS WERE PAID ON AN ANNUAL BASIS.

THE POLICY ACCOUNT VALUES, CASH SURRENDER VALUES AND DEATH BENEFIT ILLUSTRATED ARE END OF THE POLICY YEAR VALUES.

COVERAGE WILL CEASE IN YEAR 16 UNLESS THE PREMIUM IS INCREASED ON THE GUARANTEED BASIS.

THE POLICY LOAN INTEREST RATE IS 7.4% PAYABLE IN ADVANCE.

A SERVICE CHARGE OF \$25.00 WILL BE DEDUCTED FROM THE POLICY ACCOUNT VALUE EACH TIME A PARTIAL SURRENDER AMOUNT IS PAID.

THE TAX STATUS OF THIS CONTRACT AS IT APPLIES TO THE HOLDER OF THIS POLICY OR CONTRACT SHOULD BE REVIEWED EACH YEAR.

SPECIMEN

WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK  
STATEMENT OF POLICY COST AND BENEFIT INFORMATION

STANDARD SUMMARY PENN OPTION FLEX

POLICY #:0700014261

WILLIAM PENN LIFE INSURANCE COMPANY  
OF NEW YORK  
100 QUENTIN ROOSEVELT BLVD PO BOX 519  
GARDEN CITY, NEW YORK 11530ELLIOTT K ARNOLD  
11 GRACE AVENUE  
SUITE 402  
GREAT NECK NY 11021  
PREPARED ON: 10/05/95

	GUARANTEED VALUES	PROJECTED VALUES
FLEXIBLE PREMIUM ADJUSTABLE LIFE		
10 YEAR SURRENDER COST	11.977	7.907
10 NET PAYMENT	13.960	13.960
20 YEAR SURRENDER COST	.000	6.676
20 YEAR NET PAYMENT	.000	13.960

AN EXPLANATION OF THE INTENDED USE OF THE INDICES IS PROVIDED IN THE LIFE  
INSURANCE BUYER'S GUIDE.

SPECIMEN

# Exhibit D

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NO. 332 001

The Ticket Box  
2125 CENTRAL AVE  
Suite 509  
Ft. Lee NY 07024

JESSIE SANDGREEN

201461-4606

**DURABLE POWER OF ATTORNEY**

When Recorded, Mail to:

Ronald G. Wilson, Esq.  
3300 North Central Avenue  
Suite 1800  
Phoenix, Arizona 85012

EFFECTIVE DATE: Immediately

I, JON FIELDMAN, the Principal and a resident of Maricopa County, State of Arizona, have designated, constituted and appointed, and by these presents do hereby designate, constitute and appoint MICHAEL BIRNS, a resident of the State of New York, my Attorney-in-Fact and Agent (hereinafter called "Agent"), in my name and for my benefit as follows:

1. Advisory Notice to Agent. There have been recent changes to Arizona Revised Statute Section 14-5506, a statute which governs the exercise of Powers of Attorney. Under that now statute an agent cannot receive any benefits from Principal unless those benefits are specifically identified in detail within this instrument or within a written contract. Otherwise, the agent could be subject to criminal prosecution, or subject to the penalty provisions of Arizona Revised Statute Section 46-456, which authorizes the loss of the agent's right to inherit from principal as well as payment of treble damages and attorney fees. An agent should carefully review these statutes or consult with a knowledgeable attorney prior to exercising the authority granted by this Power of Attorney;

2. General Grant of Power. To exercise or perform any act, power, duty, right or obligation whatsoever that I now have or may hereafter acquire, relating to any person, matter, transaction or property, real or personal, tangible or intangible, now owned or hereafter acquired by me, including, without limitation, the following specifically enumerated powers. I grant to my Agent full power and authority to do everything necessary in exercising any of the powers herein granted, as fully as I might, or could do, if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my Agent shall lawfully do, or cause to be done, by virtue of this Power of Attorney and the powers herein granted;

3. Powers of Collection and Payment. To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of money, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pension, profit sharing, retirement, social security, insurance, and other contractual benefits and proceeds, all documents of title, all property, real or personal, intangible and tangible property and property rights, and demands whatsoever, liquidated or unliquidated, now or hereafter

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owned by, or due, owing, payable or belonging to me, or in which I have or may thereafter acquire an interest; to have, use, and take all lawful means and equitable and legal remedies and proceedings in my name for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to execute and deliver for me, on my behalf, and in my name, all endorsements, releases, receipts, or other sufficient discharges for the same;

4. **Power to Acquire and Sell.** To acquire, lease, purchase, exchange, grant options to sell, and sell and convey real or personal property, mortgage real property, tangible or intangible, or interests therein, on such terms and conditions as my Agent shall deem proper; to foreclose on mortgages and deeds of trust, to take title to property in my name if he or she thinks proper, and to execute, acknowledge and deliver deeds to real property, mortgages, releases, satisfactions and other instruments relating to real estate which he or she considers appropriate. My Agent may accept the conveyance of real property in my name as a joint tenant with the right of survivorship with my spouse, including property wherein my said Agent is one of the joint tenants of my spouse, as the case may be;

5. **Management Powers.** To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interest therein, that I now own or may hereafter acquire, in my name and for my benefit, upon such terms and conditions as my Agent shall deem proper;

6. **Banking Powers.** To make, receive and endorse checks and drafts, deposit and withdraw funds, acquire and redeem certificates of deposit, in banks, savings and loan associations and other institutions, execute or release such deeds of trust or other security agreements, as may be necessary or proper in the exercise of the rights and power herein granted, to use any credit card held in my name and to make such purchases and sign such charge slips as may be necessary to use such credit cards;

7. **Motor Vehicles.** To apply for a Certificate of Title upon, and endorse and transfer title thereto, for any automobile, truck, pickup, van, motor cycle or other motor vehicle, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances, except those specifically set forth in such transfer assignment;

8. **Business Interests.** To conduct or participate in any lawful business of whatever nature for me and in my name; execute partnership agreements and sell, liquidate or dissolve any business; elect or employ officers, directors and agents; carry out the provisions of any agreement for the sale of any business interest or the stock therein; and exercise voting rights with respect to stock, either in person or by proxy, and exercise stock options;

9. **Principal's Support.** To do all acts necessary for maintaining Principal's customary standard of living, to provide for living quarters by purchase, lease, or other arrangement, or by the payment of the operating costs of Principal's existing quarters,

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including interest, amortization payments, repairs, and taxes, to provide normal domestic help for the operation of Principal's household, and provide clothing, transportation, medical, food and incidentals for Principal;

10. Medicaid Or Other Governmental Benefits. To utilize all lawful means and methods to recover such assets and rights, qualify Principal for and claim benefits provided by any governmental agency or body, to include Medicaid, Medicare, supplemental Social Security, and Social Security Disability Insurance. This authority includes converting my assets into assets that do not disqualify me from receiving such benefits and to make gifts in accordance with the gifting authority granted elsewhere in this instrument, and to consider all rules, regulations, and statutes regarding disqualification or other adverse actions that may result from such gifting;

ST  
P.I.

W.I.  
W.I.

11. Gifts. To make gifts, to include the forgiveness of indebtedness, to my spouse, my children and descendants (if applicable) which may include my Agent, in whatever amounts and for whatever purposes as Agent deems appropriate. To make gifts to any tax-exempt charitable organization recognized under Internal Revenue Code ("IRC") Sections 170(c) or 501(c)(3) and to those persons named as beneficiaries in the Principal's most recent Will or Trust, life insurance policy, retirement benefits or payable upon death designation. As to any donee, these amounts shall not exceed the largest amount which then qualifies for the annual exclusion allowed for Federal Gift Tax Purposes as set forth in Section 2503 of the IRC. The authority to make gifts is non-accumulative and shall lapse at the end of each calendar year. All gifts may be made outright, in trust or to any guardian, conservator, or custodian of an eligible donee and gifts are not required to be in equal amounts and are not required to be made to all eligible donees. Agent shall take into consideration past history of gifts by me and shall not make any gifts if it is not in my best interest as determined by agent. The Agent is also specifically given power and authority to make gifts or transfers of Principal's interest in real or personal property in accordance with this paragraph to avoid estate recovery against such real or personal property under the Medicaid (AHCCCS/ALTCS) programs, including the power and authority to disclaim the Principal's community property interest in real and/or personal property unto the spouse;

Such gifts may include gifts or transfers to a trust, revocable or irrevocable, whether in existence or created by the Agent under this power of attorney for any purpose as set forth herein;

Gifts made for the purpose of qualifying the Principal for Medicaid (AHCCCS/ALTCS) benefits may result in a period of disqualification from such benefits;

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This Durable Power of Attorney is not intended to create a general power of appointment under IRS Code Section 2041 and any gifts to the Agent must be made in compliance with the terms of this paragraph:

  
P.I.  
FLEBBINS  
W.I.

12. **Tax Powers.** To prepare, sign and file joint or separate income tax returns or declarations of estimated tax for any year, or years; to prepare, sign and file gift tax returns with respect to gifts made by me for any year, or years; to consent to any gift and to utilize any gift-splitting provision or other tax election; and to prepare, sign and file any claims for refund of any tax; to represent me in any proceedings now pending or hereafter arising between me and the Treasury Department of the United States Government, or any other federal, state, or foreign governmental authorities, relative to my income, gift, estate, or other tax liability for all years, granting unto my said attorney full power in my name and on my behalf to appear before proper officials of the Treasury Department, or any other federal, state or foreign government officials; to adjust, settle, compromise or otherwise dispose of all questions, relative to any of the said tax liabilities; to receive copies of my tax returns and any papers, letters or other communications concerning any or all of said tax liabilities; to sign any waivers of the statute of limitations or any other waivers; to sign closing agreements for final determination of tax liability, to receive, to endorse and collect, checks and settlement of any refund; to execute and file petitions to the Tax Court of the United States, and all other papers in connection with such proceeding; to substitute in the place and stead of said attorney, any other attorney or attorneys, and to appoint association attorneys, and to deem this instrument to be the equivalent of the Internal Revenue Service Form 2848, or other similar form used by State and local taxing authorities;

13. **Safe Deposit Boxes.** To have access at any time, or times, to any safe deposit box rented by me, wheresoever located, and to remove all, or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate, as a result of permitting my Agent to exercise this power;

14. **Retirement Assets and Insurance Contracts.** To manage any interest which I may have in any retirement asset or insurance contract, which shall include any interest which I may have in any qualified retirement plan, annuity, or account, such as any pension, annuity or other plan, or account governed by ERISA, CSRS, or FERS, any IRA, SEP IRA, or SIMPLE IRA, any tax-sheltered annuity, any deferred compensation plan, any modified endowment contract, or any MSA. The authority to manage any such interest shall include making any elections or undertaking other acts which are required under applicable laws to create, maintain or enhance any tax-advantage status of my interest, including authorizing the timing and amount of any distributions from the retirement assets or insurance contracts, or payment for premiums, or authorizing payment for premiums for



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any insurance contract, but shall not include the authority to change the name of any beneficiary in any retirement asset or insurance contract;

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P.I.

Pmc  
W.I.

15. Power to Sue Third Parties. If any third-party (including stock transfer agents, title insurance company, banks, credit unions, and savings and loan associations) with whom my Agent seeks to transact, refuses to recognize my Agent's authority to act on my behalf pursuant to this Power of Attorney, I authorize my Agent to sue and recover from such third-party all resulting damages, costs, expenses and attorney fees that are incurred because of such failure to act. The cost, expenses, and attorney fees incurred in bringing such action shall be charged against my general assets, to the extent that they are not received from said third-party;

16. Benefits Received by Agent. It is my intention that my Agent be reasonably compensated for the services rendered on my behalf and be reimbursed for any expenses paid by the Agent which were incurred on my behalf. Reasonable compensation shall not exceed the hourly wage or salary equivalent which the Agent customarily receives in his or her regular employment. Reimbursement shall include, but is not limited to, monies paid for medications, medical co-payments, fees for medical, nursing and care-giver services, household or personal incidentals, automobile maintenance and repair, lawn services or landscaping, fees for professional services, reasonable travel or lodging costs in performance of the duties created by this Power of Attorney, maintenance and repair of my residence and care of my pets. Benefits authorized to be received by my Agent shall include any imputed rent deemed to exist due to any arrangement, agreement or understanding between my Agent and I which allows my Agent to live rent-free in my residence or other property owned by me. Specifically, I grant to my Agent the ability to inherit from me, if I specifically name them in my Will or Trust;

TF  
P.I.

Pmc  
W.I.

17. Interpretation and Governing Law. This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers herein is not intended to, nor does it, limit or restrict the general powers herein granted to my Agent. This instrument is executed and delivered in the State of Arizona, and the laws of the State of Arizona shall govern all questions as to the validity of this power and the construction of its provisions;

18. Third-Party Reliance. Third parties may rely upon the representations of my Agent, as to all matters relating to any power granted to my Agent, and no person who may act in reliance upon the representations of my Agent, or the



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authority granted to my Agent shall incur any liability to me or my estate as a result of permitting my Agent to exercise any power;

19. Incapacity or Disability of Principal. This General Power of Attorney shall not be affected by my incapacity or disability and shall remain in full force and effect until revoked. This General Power of Attorney may be revoked by the Principal giving actual written notice to anyone dealing with the Attorney-in-Fact, or by recording a Revocation of Power of Attorney with the County Recorder of Maricopa County, Arizona. If this General Power of Attorney is not revoked within six (6) months from its effective date by recording a Revocation, it shall be considered to be renewed and effective for an additional six (6) months period until either the recording of the Revocation of Power of Attorney, or by actual notice to anyone dealing with the Attorney-in-Fact. Anyone dealing with the Attorney-in-Fact, shall be relieved from knowledge as to its revocation, until actual receipt of a recorded Revocation of said Power of Attorney. The failure of the Principal to record any Revocation shall be construed as a renewal of the Power of Attorney. My physician's declaration in writing of my incapacity or disability shall be determinative hereunder;

20. Transfer of Assets. To transfer any assets of mine, whether real or personal property, to the Trustee of any Revocable Trust established by me or for me, which provides benefits for me during my lifetime, and to establish such Revocable Trust for me, provided that the distribution after my death from any such Trust should conform to any estate plan that I have previously established by Will or otherwise with respect to the assets transferred;

21. Power to Create and Fund Trusts. To convey and transfer any of my property to a trustee who shall hold the same for my benefit, my spouse's benefit, and/or the benefit of my children and other members of my immediate family upon such trust terms and conditions as my Agent shall deem desirable and to establish a revocable trust for me, or trust pursuant to 42 U.S.C. Section 1396p(d)(4), provided that the distribution after my death from any such trust should conform to any estate plan that I have previously established by Will or otherwise with respect to assets transferred;

  
P.J.

  
W.J.

22. Tangible Personal Property. To distribute during my lifetime any bequests of tangible personal property which I have made by Will or dispositions of such property held in Trust or contained in a Memorandum referred to in a valid Will or Trust instrument when, in my agent's good faith determination, I am incapacitated to the point where I am unable to make decisions with regard to such property and I am unlikely to recover to the point where I can make such decisions in the future, provided that neither

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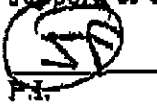
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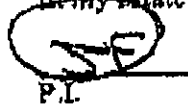
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such property nor the proceeds from the sale of such property is necessary for my health, support, or comfort;

  
P.I.

  
W.I.

23. Disclaimer of Beneficial Interest. To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift or testamentary disposition; to release or abandon any property or interest in property or powers which I may now or hereafter own, including interest in or rights over trust assets (including the right to alter, amend, revoke or terminate to effect the disclaimer) and to exercise any right to claim an elective share in any estate or under any Will, and in exercising such discretion, my Agent may take into account such matters as shall include, but shall not be limited to, any reduction in estate or inheritance taxes on my estate, and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property;

  
P.I.

  
W.I.

IN WITNESS WHEREOF, I, the Principal, execute this document intending it to be effective on the date that it is signed. I understand that (a) this document gives my Agent serious powers over me and my assets, (b) the powers to continue after I become incapacitated, or disabled and (c) I can revoke and cancel this document at any time and for any reason, or no reason. Further, I, the Principal sign my name to this Power of Attorney on the date indicated below and being first duly sworn, declare to the undersigned authority that I sign and execute this instrument as my Power of Attorney and that I sign it willingly, or willingly direct another to sign for me, or sign by an X which shall be witnessed, and that I execute it as my free and voluntary act for the purposes expressed in the Power of Attorney and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence. Further, I direct that photographic copies of this Power be made, which will have the same force and effect as the original.

-C-17. LITB BILFBI FCBHMSANDGREEN

DATED at Phoenix Arizona, on January 31st  
2005.

**JON FIELDMAN**  
8270 E. Wood Drive  
Scottsdale, Arizona 85260

I, Robert M. Carlson, the Witness, sign my name to the foregoing Power of Attorney, being first duly sworn and do declare to the undersigned authority that the Principal signs and executes this instrument as his/her Power of Attorney and that he/she signed it willingly, or willingly directs another to sign for him/her, and that I, in the presence and hearing of the Principal, sign this Power of Attorney as Witness to the Principal signing and that to the best of my knowledge, the Principal is eighteen (18) years of age or older, of sound mind and under no constraint or undue influence.

Witness

(Witness must not be agent, agent's spouse or agent's child)

Date January 31, 2005

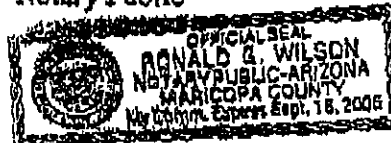
STATE OF ARIZONA           )  
County of Maricopa         ) ss.

Subscribed, sworn to and acknowledged before me by JON FIELDMAN, the Principal, and subscribed and sworn to before me by Robert M. Carlson, the witness, this 31<sup>st</sup> day of June, 2005.

**Notary Public**

**My Commission Expires:**

5-15-2006



PI=Principal's Initials  
WI=Witness' Initials

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,

Plaintiff,

-against-

KIMBAL VISCUSO, CHARLES M. BIRNS  
and BETH S. MARTIN-BIRNS

Defendants.

**Civil Action No. 08 Civ. 1141 (WCC)**

**ORDER**

This motion having been brought before this Court by way of the motion of interpleader-defendant Kimbal Viscuso, pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, to dismiss this action based upon the doctrine of unclean hands, or in the alternative for abstention pursuant to the discretionary power of the Court to decline to hear matters in equity; or in the alternative for summary judgment awarding defendant Viscuso the full policy proceeds, and the Court, having reviewed and considered all of the papers submitted in support of and in opposition to this motion; and having heard the oral argument of the parties' counsel; and for good cause shown,

IT IS, on this \_\_\_\_\_ day of April 2008,

**ORDERED** that the motion of interpleader-defendant Kimbal Viscuso to dismiss this action, pursuant to 12(b)(1) and (6), or the discretionary power of the Court to abstain from hearing a matter in equity, is hereby granted; and

**IT IS FURTHER ORDERED** that plaintiff The William Penn Life Insurance Company Of New York pending action in interpleader is dismissed in its entirety, without prejudice or costs to either party; and

**IT IS FURTHER ORDERED** that this order shall be served upon the parties within seven (7) days.

---

Honorable William C. Connor, U.S.D.J.